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In The Supreme Court of the United States

McCREARY COUNTY, KENTUCKY; JIMMIE GREENE as McCreary County Judge Executive; PULASKI COUNTY, KENTUCKY; DARREL BESHEARS as Pulaski County Judge Executive,

Petitioners,

v.

ACLU OF KENTUCKY, *et al.*,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF ON THE MERITS OF *AMICUS CURIAE* PACIFIC JUSTICE INSTITUTE IN SUPPORT OF PETITIONERS

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QUESTIONS PRESENTED

The following Questions presented for review will be addressed in this brief:

3. Whether the *Lemon* test should be overruled since the test is unworkable and has fostered excessive confusion in Establishment Clause jurisprudence.

4. Whether a new test for Establishment Clause purposes should be set forth by this Court when the government displays or recognizes historical expressions of religion.

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BRIEF ON THE MERITS OF *AMICUS CURIAE* PACIFIC JUSTICE INSTITUTE IN SUPPORT OF PETITIONERS

I. INTRODUCTION

In this brief, Pacific Justice Institute ("Pacific Justice")[1] will address Questions 3 and 4 as presented for review in the Petition for Writ of Certiorari.

Pacific Justice is a nonprofit corporation organized for the purpose of engaging in litigation affecting the public interest. Pacific Justice has participated in litigation involving significant constitutional issues in both federal and state courts, including the Pledge of Allegiance case recently decided by this Court in *Elk Grove Unified School District v. Newdow,* 542 U.S. ___ (2004). In addition, Pacific Justice is a legal defense organization specializing in the defense of religious freedom, parental rights, and other civil liberties.

II. SUMMARY OF ARGUMENT

The facts relevant to the issues addressed in this brief are summarized as follows. This case involves displays in the McCreary and Pulaski county courthouses of the Ten Commandments,[2] along with the following secular historical and legal documents:

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[1] This brief is filed upon the written consent of the legal counsel for the Petitioners, which has been lodged with the Clerk of this Court. On November 22, 2004 Respondents filed a global Rule 37 consent for all prospective *amici*. Pursuant to Rule 37.6, *amicus curiae*, Pacific Justice, and its counsel of record, Peter D. Lepiscopo, hereby affirm that no counsel for any party authorized this brief in whole or in part and that no person other than counsel of record drafted the brief. No person or entity, other than *amicus*, made any monetary contribution to the preparation or submission of this brief.

[2] The initial displays at the McCreary and Pulaski county courthouses were limited to display of the 10 Commandments. After the litigation commenced, petitioners twice modified the displays to include secular historical and legal documents for purposes of complying with the Constitution. *McCreary*, *infra*, 354 F.3d at 441.

(a) the Star Spangled Banner;

(b) the Declaration of Independence;

(c) the Bill of Rights;

(d) the Magna Carta;

(e) the Preamble to the Constitution of Kentucky;

(f) the national motto of "In God We Trust";

(g) a page from the Congressional Record of Wednesday, February 2, 1983, Vol. 129, No. 8, declaring it the Year of the Bible and including a copy of the Ten Commandments;

(h) a proclamation by President Abraham Lincoln designating April 30, 1863 a National Day of Prayer and Humiliation;

(i) an excerpt from President Lincoln's "*Reply to Loyal Colored People of Baltimore upon Presentation of a Bible*" reading, "*The Bible is the best gift God has ever given to man*";

(j) a proclamation by President Ronald Reagan marking 1983 the Year of the Bible;

(k) Lady Justice;

(l) the Mayflower Compact; and

(m) a one-page prefatory description of the display, which reads: "*The Foundations of American Law and Government Display.*"

American Civil Liberties Union of Kentucky v. McCreary County, Kentucky, 354 F.3d 438, 440-443 (6th Cir. 2003) ("*McCreary*").

The U.S. District Court for the Eastern District of Kentucky concluded that the courthouse displays contravened the Establishment Clause and ordered immediate removal of the Ten Commandments from the displays at the McCreary and Pulaski county courthouses. *ACLU of Kentucky v. McCreary County*, 145 F.Supp. 845, 853 (E.D. Ky. 2001). The Sixth Circuit affirmed. *McCreary*, *supra*, 354 F.3d at 462.

As an initial matter, it is worth noting that the nature of the displays at the McCreary and Pulaski County courthouses are similar to this Court's friezes on the north

and south courtroom walls. As explained in an information sheet published by the Court's Office of the Curator, the friezes depict "a procession of 'great lawgivers of history' to portray the development of the law." The display includes, for example, such historic and religious figures as Hammurabi, King Solomon, Confucius, and Muhammad. Included within the friezes is **Moses holding two overlapping tablets – the Ten *Commandments***. (App. 1-7; *see, also*, Chief Justice Berger's comment in *Lynch v. Donnelly*, 465 U.S. 668, 677 (1984).)

When viewed in light of past decisions by this Court, the two Religion Clauses of the First Amendment, the Free Exercise Clause[3] and the Establishment Clause,[4] *appear* to have a natural tension between them. However, when understood in their proper historical and substantive context, it is clear that they were intended to compliment one another for the express purpose of securing the most cherished of individual liberties: freedom of one to worship according to one's own conscience.

The proper way to analyze the interplay between the Establishment and Free Exercise clauses is to recognize that the former relates to a *restraint* on governmental *power*, whereas the latter *secures* a *substantive* ***individual*** right (i.e., freedom of religion). Simply stated, the Establishment Clause serves as a shield, protecting the Free Exercise Clause from governmental intrusion. Viewing it from a constitutional perspective, the Free Exercise Clause is *substantive* in nature (i.e., secures an individual *right*), whereas the Establishment Clauses is *structural* in nature (i.e., relates to government power, or restraint thereof). Understanding the Religion Clauses in this way will dispel the clouds of uncertainty presently surrounding Establishment Clause jurisprudence, to wit: the reason there is still confusion and a split in the Circuit Courts

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[3] "Congress shall make no law . . . prohibiting the free exercise [of religion]." U.S. Const. amend. I ("Free Exercise Clause").

[4] "Congress shall make no law respecting an establishment of religion . . ." U.S. Const. amend. I ("Establishment Clause").

relative to application of Establishment Clause is because that clause is being interpreted and applied in a manner that is in direct contravention to its very nature and contrary to the intent of the Founders.

As will be demonstrated below, the Court should reconsider and overrule existing Establishment Clause jurisprudence starting with *Everson v. Board of Education*, 330 U.S. 1 (1947) ("*Everson*"),[5] through *Lemon v. Kurtzman*, 403 U.S. 602 (1971) ("*Lemon*") and *Lemon*'s progeny because the problems that presently exist are a direct consequence of the misapplication of the Selective Incorporation Doctrine applying the Establishment Clause to the States (see, e.g., *Everson*). Simply stated, the Court should take the opportunity presented in this case to overrule *Everson*, *Lemon*, and *Lemon*'s progeny by holding that the Establishment Clause is ***not*** incorporated through the Fourteenth Amendment's Due Process Clause, and, therefore, ***not*** applicable to the several states.

Although the invitation to overrule existing Establishment Clause jurisprudence might seem as a dramatic departure from more than fifty years of precedent, the present state of affairs justifies such a remedy.

First, if *Lemon* and its progeny were converted to statutes this Court would declare them unconstitutional

[5] Although in cases decided before *Everson*, *Cantwell v. Connecticut*, 310 U.S. 296 (1940) ("*Cantwell*") and *Murdock v. Pennsylvania*, 319 U.S. 105 (1943) ("*Murdock*"), this Court indicated that the First Amendment was incorporated through the Fourteenth Amendment's Due Process Clause, those cases concerned the Free Exercise Clause (***not*** the Establishment Clause). It was not until *Everson* that this Court expressly held that the Establishment Clause was made applicable to the states by way of incorporation through the Fourteenth Amendment's Due Process Clause. *Everson*, *supra*, at 8. Consequently, nothing in this brief should be construed as urging that *Cantwell* or *Murdock* be overruled. This is because it is argued in this brief that the Free Exercise Clause, which is a substantive individual right, is incorporated and made applicable to the states; whereas, this brief argues that the Establishment Clause, which is a restraint on ***federal*** power only, is ***not*** incorporated and ***not*** applicable to the states.

as being void for vagueness. For example, contained in this Court's friezes is a depiction of Moses holding the Ten Commandments; while the Sixth Circuit declared the display of the Ten Commandments in the McCreary and Pulaski county courthouses unconstitutional. Are both displays unconstitutional? If not, how does one attempting to comply with Establishment Clause jurisprudence distinguish between the two?

Second, the ***states*** are fully equipped to handle Establishment Clause type challenges under their ***state*** constitutions and within their ***state*** court systems, as all of them have incorporated some form of the Blaine Amendment or this Court's Establishment Clause jurisprudence within their state constitutions.

Finally, the present Establishment Clause jurisprudence has actually resulted in the Establishment Clause and Free Exercise Clause being at odds with one another (as opposed to working harmoniously as the Framers intended). Specifically, an overt hostility towards religion has spread throughout the nation in the wake of the vast misunderstandings resulting from this Court's infamous history of Establishment Clause jurisprudence. One recent example involves a California school district wherein a 5th grade public school teacher was ordered ***not*** to read to his students from, *inter alia*, the Declaration of Independence, George Washington's journal, and other historical papers, because of references made to God in those documents. Furthermore, the teacher was required to submit all of his supplemental materials to the principal ***before*** presenting them to his students (a procedure that was ***not*** required of any other teacher). A civil complaint (see Appendix) challenging the school district's actions was filed on November 22, 2004 in the U.S. District Court for the Northern District of California (*Williams v. Vidmar, et al.*, U.S.D.C. No. C 04-4946). (App. 8-29.)

In March 2004 a comprehensive compilation of this nationwide hostility towards religion and religious persons was submitted to the U.S. Senate Judiciary Subcommittee on the Constitution, Civil Rights & Property Rights in

testimony presented by constitutional law attorney Kelley Shackelford of Texas (a member of the Bar of this Court and who has argued before this Court). To assist the Court, the comprehensive summary titled, *Examples of Hostility to Religious Expression in the Public Square* is set forth in the Appendix at pp. 30-81.

III. THE COURT SHOULD OVERRULE *EVERSON* AND *LEMON* BECAUSE THE ESTABLISHMENT CLAUSE IS A *RESTRAINT* ON *FEDERAL* POWER AND IS *NOT* A SUBSTANTIVE INDIVIDUAL RIGHT, AND, THEREFORE, DOES *NOT* APPLY TO THE STATES

As will be demonstrated below in greater detail, this Court's decisions in *Everson*, *Lemon*, and *Lemon's* progeny have created constitutional confusion in Establishment Clause jurisprudence and has resulted in an overt nationwide hostility towards religion and religious persons. The time has come for the Court to revisit the issue of whether the Establishment Clause should be applied to the states through the Fourteenth Amendment's Due Process Clause. As will be clear, the answer is that it should not, requiring the Court to overrule *Everson*, *Lemon*, etc.

A. THE HISTORICAL CONTEXT OF THE ADOPTION OF THE ESTABLISHMENT CLAUSE DEMONSTRATES THAT IT IS A RESTRAINT ON FEDERAL POWER, NOT A SOURCE OF A SUBSTANTIVE INDIVIDUAL RIGHT

On June 8, 1789 James Madison submitted to the First Congress[6] proposed amendments to the newly ratified U.S. Constitution. 1 *Annals of Congress* 448, *et seq.* (J. Gales ed., 1834) ("*Annals of Cong.*"). Included within the

[6] Mr. Madison submitted the proposed amendments to the U.S. House of Representatives sitting as a Committee of the Whole. *Id.*

proposed amendments was the precursor of what would later become the Establishment Clause:

> *"The civil rights on none shall be abridged on account of religious belief or worship,* ***nor shall any national religion be established****, nor shall the full and equal rights of conscience be in any manner, or any pretext, infringed."*

Id. at 451 (emphasis added).

After being referred to a select committee, the language proposed by Mr. Madison on June 8, 1789 was modified to read as follows: "*. . . no religion shall be established by law . . .*" *Annals of Cong.*, p. 757. Conspicuously omitted was the word "***national***." This caused Mr. Madison to rise in the House to argue for reinsertion of the word "*national*" before the word "religion." As reported, Mr. Madison voiced his concerns thusly:

> *"Mr. Madison said, he apprehended the meaning of the words to be, that* ***congress*** *should* ***not*** *establish a religion, and enforce the legal observation of it by law, nor compel men to worship God in any manner contrary to their conscience. Whether the words are necessary or not, he did not mean to say, but they had been* ***required*** *by some of the* ***State*** *Conventions, who seemed to entertain an opinion that under the clause of the constitution, which gave power to Congress to make all laws* ***necessary and proper*** *to carry into execution the constitution, and the laws made under it, enabled them to make laws of such a nature as might infringe the rights of conscience, and* ***establish*** *a* ***national*** *religion: to prevent these effects he presumed the amendment was intended and he thought it as well expressed as the nature of the language would admit . . . Mr. Madison thought, if the word* ***national*** *was inserted before religion, it would satisfy* [Mr. Huntington of Connecticut]. *He* [Mr. Madison] *believed that the* ***people feared*** *one sect obtain preeminence, or two combine together, and* ***establish a religion to which they would compel others to***

> ***conform***. *He [Mr. Madison] thought if the word* ***national*** *was introduced, it would point the amendment directly to the object it was intended to prevent."*

Annals of Cong., pp. 758-759 (emphasis added).

What were Mr. Madison's observations relative to using the qualifying term "*national*" before the word "religion" in the proposed amendment? Clearly, they were points relating to ***restraining*** Congress' ***power***, not the securing of a substantive, individual right:

1. That Congress should be restrained from establishing a religion;
2. That Congress needed to be restrained by force of law;
3. That Congress should not compel any person to have (or, for that matter, not have) a specific religious belief;
4. That the use of the term "national" was required by several of the *State* Conventions that had agreed to ratify the Constitution so long as a bill of rights was passed immediately thereafter;
5. That the states were suspicious and concerned that pursuant to the Necessary and Proper Clause[7] Congress might encroach upon state powers and prerogatives in their area of religion;
6. That absent a specific ***restraint*** on ***federal*** power under the Necessary and Proper Clause, Congress might ***establish*** a ***national*** religion;
7. That it was obvious to the author, Mr. Madison, the purpose of the proposed Establishment Clause was to restrain federal power; and

[7] *"The Congress shall have power . . . To make all laws which shall be* ***necessary and proper*** *for carrying into execution the foregoing powers . . ."* U.S. Const. art. I, sec. 8 ("Necessary and Proper Clause").

8. That the insertion of the word "*national*" before "religion" would address the people's concern that Congress might (through combinations of representatives and senators from some states) favor one sect over others, and, thereby, favor and/or establish a religion and compel others to conform to the tenets of a national religion.

Thereafter, Representative Livermore moved that the word "*national*" be replaced and suggested the following version of the clause:

> *"****Congress*** *shall make no laws touching religion, or infringing the rights of conscience."*

Id. at 759 (emphasis added).

Representative Elbridge Gerry took exception to the word "*national*," but for a different reason than Representative Livermore, which related directly to the principle of ***Federalism***:

> *"Mr. Gerry did not like the term national, proposed by* [Mr. Madison]*, and he hoped it would not be adopted by the House. It brought to his mind some observations that had taken place in the* [ratifying] *conventions at the time they were considering the present constitution. It had been insisted upon by those who were called antifederalists, that this form of Government consolidated the Union;* [Mr. Madison's] *motion shows that he considers it in the same light. Those who were called antifederalists at that time complained that they had injustice done to them by the title, because they were in favor of a* ***Federal*** *Government, and the others* [called federalists] *a national one; the federalists were for ratifying the constitution as it stood, and the others not until amendments were made."*

Id. (emphasis added).

Mr. Madison replied to Representative Gerry by assuring him that the form of government established by the Constitution was indeed a federal one:

> *"Mr. Madison . . . observed that the words 'no **national** religion shall be established by law,' did **not** imply that the Government as a national one."*

Id. (emphasis added). Thereafter, Mr. Madison withdrew his language containing the word "*national*." The House then passed Representative Livermore's version that used the term "***Congress***" instead of "national." *Id.*

On August 20, 1789 the House adopted the following language: "***Congress*** *shall make no law establishing religion.*" *Id.* at 796 (emphasis added). Ultimately, the present language of the Establishment Clause was adopted, which expressed the consensus relating to the intent of the First Congress to divest Congress of jurisdiction over religion by placing a ***restraint*** on ***federal*** power: "**Congress** shall make no law respecting the establishment of religion . . ." U.S. Const. amend. I (Establishment Clause).

It is undisputed that from the debates surrounding the proposal of the Establishment Clause, the First Congress had one thing in mind, to wit: **restraining *federal*** power (i.e., Congress' power, not the states) from ***establishing*** a ***national*** religion. In fact, the debates evince that the First Congress spent time fine tuning the language of the Establishment Clause in order to insure that:

1. Congress would not have the power to establish religion; and
2. The principle of Federalism would be embodied in the Establishment Clause.

In discussing the nature and scope of the Establishment Clause, *Amicus* would be remiss if it did not address Thomas Jefferson's metaphor, "a *wall of separation between church and State*," as it relates to the First Congress' construction and adoption of the Establishment Clause. As a reminder, at the time the Constitution was adopted, Thomas Jefferson was in France, and furthermore, he was not a member of the First Congress that constructed and adopted the Establishment Clause. The oft-invoked passage of President Jefferson's January 1,

1802 letter to the Danbury Baptist Association ("*Danbury Letter*") reads as follows:

> *"Believing with you that religion is a matter which lies solely between man and his God, that he owes account to none other for his faith or his worship, that the legislative powers of government reach actions only, and not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should 'make no law respecting an establishment of religion, or prohibiting the free exercise thereof,' thus building **a wall of separation between Church and State**."*

Lipscomb, Andrew, and Bergh, Albert, *The Writings of Thomas Jefferson*, Vol. 16, pp. 281-282 (1903) ("*The Writings of Thomas Jefferson*") (emphasis added).

The *church and state* metaphor was first referred to by this Court in the late 19th Century in the decision of *Reynolds v. United States*, 98 U.S. 145, 164 (1879) ("*Reynolds*"). *Reynolds*, however, was a Free Exercise case related to the territory of Utah's bigamy statute. In that case, the *church and state* metaphor was simply asserted without explanation. This is most likely because at the time *Reynolds* was decided, 1879, Utah was not a state.[8] Consequently, the issue of whether the Free Exercise or Establishment clauses applied to the states was neither at issue nor contemplated.

More importantly, there has been a recent ***evidentiary*** development that places President Jefferson's Danbury Letter in its complete context relative to the Establishment Clause, which was ***not*** available to this Court when *Reynolds*, *Everson*, or *Lemon* were decided. Specifically, in 1998 the Library of Congress presented an exhibit titled, "*Religion and the Founding of the American Republic*." One particular aspect of the planned exhibit was a display of the Danbury Letter. In order to provide

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[8] Utah was admitted to the Union on January 4, 1896.

context to the exhibit, the Library's Curator, James Hutson, decided that a display of President Jefferson's handwritten ***draft*** of the Danbury Letter ("Draft Danbury Letter") would be educational because it would provide important historical context for the Danbury Letter actually sent by President Jefferson. However, the Draft Danbury Letter contained President Jefferson's deletions, which took the form of bold lines striking portions of the letter. This made the Draft Danbury Letter all but impossible to read. Not to be deterred, Curator Hutson contacted F.B.I. Director, Louis Freeh, to enlist help from the forensic experts at the F.B.I. The result was that the F.B.I.'s experts were able to make the Draft Danbury Letter fully legible. Hutson, James (Curator of the Library of Congress), *Wall of Separation: FBI Helps Restore Jefferson's Obliterated Draft*, Library of Congress Information Bulletin (June, 1998): http://www.ss.loc.gov/loc/lcib/9806/danbury.html (December 4, 2004).

The following excerpt is from the Draft Danbury Letter:

> " . . . I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should "make no law respecting an establishment of religion, or prohibiting the free exercise thereof; thus building a wall of *eternal* separation between Church & State. ***Congress thus inhibited from acts respecting religion, and the Executive authorised only to execute their acts***. . . . "

(App. 90-91, emphasis added.) The italicized portions of the excerpt were included in the Draft Danbury Letter but omitted from the one finally sent. What is important relative to the Establishment Clause is where President Jefferson follows the *church and state* metaphor with his understanding of the scope of the Establishment Clause: ***"Congress thus inhibited from acts respecting religion, and the Executive authorised only to execute their acts*** . . ." Here, President Jefferson is in complete concurrence with James Madison as to the object of the Establishment Clause: Congress, not the states. Consequently, in the

Draft Danbury Letter President Jefferson clearly expressed that the Establishment Clause was:

1. Based on ***Federalism***;
2. A restraint on ***federal*** power; and
3. Not related to a substantive, individual right.

Id. Based on the foregoing, a more accurate description of President Jefferson's metaphor expressed in the Danbury Letter would be that the Establishment Clause created a *wall of separation between Church and* ***Congress***.

The following letter from President Jefferson to his Attorney General, Levi Lincoln (*"Lincoln Letter"*) places the Danbury Letter in an even clearer context:

> " . . . *The Baptist address, now enclosed, admits of a condemnation of the alliance between Church and State, under the authority of the Constitution.* ***It furnishes an occasion, too, which I have long wished to find, of saying why I do not proclaim fastings and thanksgivings, as my predecessors did***. *The address, to be sure, does not point at this, and its introduction is awkward. But I foresee no opportunity of doing it more pertinently. I know it will give great offense to the New England clergy; but the advocate of religious freedom is to expect neither peace nor forgiveness from them. Will you be so good as to examine the answer, and suggest any alterations which might prevent an ill effect, or promote a good one, among the people? . . .* "

The Writings of Thomas Jefferson, Vol. 10, p. 305.

The Lincoln letter clearly demonstrates that President Jefferson's Danbury letter was not one of expounding upon the Establishment Clause, but rather purely political in nature. That is to say, as expressed by President Jefferson himself in the Lincoln Letter, he intended to send the Danbury Letter for the purpose of addressing fears of Danbury Baptists Association (which were expressed in an October 7, 1801 letter to President Jefferson). Interestingly, President Jefferson included his Draft Danbury Letter with his letter to Mr. Lincoln for his review and

suggestions. Surely, as the author of the Declaration of Independence, President Jefferson was not sending the Draft Danbury Letter to Mr. Lincoln for review of the correctness of political and governmental theory, but rather for the purpose of making sure it did not have any unintended (i.e., negative) ***political*** consequences.

In summary, the foregoing demonstrates that the historical context in which the Establishment Clause was framed and adopted provides a comprehensive view of the nature and scope of the Establishment Clause. Perhaps it might be advantageous to state what the Establishment Clause is not. It is neither a restraint on the power of the states, nor a source of a substantive, individual right. Thus, the conclusion is inescapable: the Establishment Clause remains today what it was at the time of its adoption: a restraint on federal power. Even in his handwritten Draft Danbury Letter, President Jefferson agrees that by adopting the Establishment Clause, Congress erected a "*wall of eternal separation between Church & State. **Congress thus inhibited from acts respecting religion*** . . ." (App. 90, emphasis added.)

B. THE ESTABLISHMENT CLAUSE SHOULD *NOT* BE APPLIED TO THE STATES THROUGH THE FOURTEENTH AMENDMENT'S DUE PROCESS CLAUSE BECAUSE IT IS A *RESTRAINT* ON *FEDERAL* POWER, RATHER THAN A SOURCE OF A SUBSTANTIVE INDIVIDUAL RIGHT

The doctrine of applying portions of the Bill of Rights to the states through the Fourteenth Amendment's Due Process Clause is known as the Selective Incorporation Doctrine. *See, e.g., Palko v. State of Connecticut*, 302 U.S. 319 (1937) ("*Palko*"). In rejecting the suggestion that the entire Bill of Rights (save Amendments 9 and 10) be incorporated (known as the "*Total Incorporation Doctrine*"), Justice Cardozo instead invoked the Selective Incorporation Doctrine, whereby a portion of the Bill of Rights will be incorporated if it represents a ***right*** that is

"*found to be implicit in the concept of ordered liberty.*" *Id.* at 325. This doctrine was further clarified by Justice White to include ***rights*** that are "fundamental to the American scheme of Justice." *Duncan v. Louisiana*, 391 U.S. 145, 148-149 (1968).

When analyzed within the historical context surrounding the adoption of the Establishment Clause (see Section III.A, *supra*), it becomes clear that it is ***not*** sound constitutional doctrine to apply the Establishment Clause to the states by way of the Selective Incorporation Doctrine.

From the outset, it is important to note that at the very time the Establishment Clause was proposed, debated, and ultimately adopted, seven of the fourteen[9] states had state-sponsored churches, Levy, Leonard, *The Establishment Clause: Religion and the First Amendment* 76 (1986) ("*Levy, Establishment Clause*"), and all of the states provided financial aid and state support to advance religion, Bradley, Gerard V., *Church-State Relationships in America* 13 (1987) ("*Bradley, Church-State*"). Interestingly, according to this Court's decisions in *Everson*, *Lemon*, etc., these states would have been acting in absolute contravention of the very Establishment Clause they had just adopted. Of course, the states had no such intention by voting in favor of ratifying the Bill of Rights (and by extension, the Establishment Clause). In fact, their intention is clearly expressed in the language itself as a ***restraint*** on the ***federal*** government's power to interfere with the states' power to deal with the issue of religion. This view is also consistent with Supreme Court Justice Joseph Story's "*Commentaries on the Constitution and Bill of Rights*":

> "*Thus, the whole power over the subject of religion is left **exclusively** to the **State** governments, to be acted upon according to their own sense of justice and the State Constitutions.*"

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[9] This includes the state of Vermont.

Story, Joseph, *3 Commentaries on the Constitution of the United States* § 1879 (1833) ("*Story, Commentaries*") (emphasis added).

In fact, the Establishment Clause is consistent with the Tenth Amendment's embodiment of the principle of Federalism.[10] That is to say, the Establishment Clause serves as a restraint on the power of the federal government relating to religion, thereby reserving jurisdiction to the states. The Tenth Amendment is a restraint on the federal government to exercise only those powers granted to it by the Constitution, reserving all other powers not prohibited by the Constitution vested in the states and people. U.S. Const. amend. X. When construing the Establishment Clause and Tenth Amendment together, it becomes clear that the Establishment Clause is a bar to the ***federal*** (not state) government's exercise of jurisdiction over matters relating to religion.

In the wake of the confusion created by *Everson*, *Lemon*, etc., many constitutional scholars have recently been exploring the conclusion that the Establishment Clause is ***not*** a substantive individual right, but rather a jurisdictional mechanism to restrain the ***federal*** (not state) government's involvement in religion, as the following examples demonstrate:

> *"[T]he Establishment Clause expressed the principle of **federalism**: The federal government could neither establish religion at the federal level, nor disestablish religion in the states."*

Lash, Kurt T, *The Second Adoption of the Establishment Clause*, 27 Ariz. St. L.J. 1085, 1088-89 (1995) (emphasis added).

> *"[T]he establishment clause embodied a structural safeguard to maximize protection of this substantive right: a framework of federalism was instituted to preserve religious liberty by fostering local decision making authority on church/state issues. The **national** government was thus specifically **enjoined** from dictating any policy in the area of religious establishment."*

Lietzau, William K., *Rediscovering the Establishment Clause: Federalism and the Rollback of Incorporation*, 39 DePaul L. Rev. 1191 (1990) (emphasis added).

> *"The original intention behind the establishment clause, as explained below, seems fairly clearly to have been to forbid establishment of a **national** religion and to prevent federal interference with a **state's** choice of whether or not to have an official state religion."*

Paulson, Michael A., *Religion, Equality, and the Constitution: An Equal Protection Approach to Establishment Clause Adjudication*, 61 Not. Dame L. Rev. 311, 317 (1986) (emphasis added).

Finally, *"[T]he establishment clause was meant to reserve powers to the several **states**."* Snee, Joseph M., *Religious Disestablishment and the Fourteenth Amendment*, Wash. U. L. Q. 371, 379 (1954) (emphasis added).

In order to properly understand why the Establishment Clause should ***not*** be applied to the states, the congressional intent and purpose of the Fourteenth Amendment's Due Process Clause must be considered. The Thirty-Ninth Congress proposed the Fourteenth Amendment on June 13, 1866. Cong. Globe, 39th Cong., 1st Sess. 3144 (June 13, 1866). It was ratified two-years later by three-fourths of the states on July 21, 1868. Cong. Globe, 40th Cong., 2d Sess. 4294-96 (1868). The relevant portion of section 1 of the Fourteenth Amendment provides:

> " . . . nor shall any state deprive any person of life, liberty, or property, without due process of law . . ."

U.S. Const. amend. XIV, sec. 1 ("Due Process Clause").

In the debates surrounding Congress' passage of the Fourteenth Amendment there was no indication that the Due Process Clause was intended to make the Establishment

[10] The Tenth Amendment provides: *"The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."* U.S. Const. amend. X.

Clause applicable to the states. Moreover, during the ratification debates held by the states, statements made by state governors, and news articles in the states are devoid of any discussion that the Establishment Clause was to be applied to the states through the Due Process Clause. Fairman, Charles, *Does the Fourteenth Amendment Incorporate the Bill of Rights*? 2 Stan. L. Rev. 5, 81-132 (1950). Had any mention been made that the intent and/or application of the Due Process Clause was to apply the Establishment Clause to restrain state governments, there would have been evidence of vigorous debates in this regard. This is true because at the very time of the state ratification debates the states had provisions in their state constitutions that would be in direct contravention of the Establishment Clause. For example, on July 7, 1866 New Hampshire ratified the Fourteenth Amendment, and at the same time its state constitution provided:

> "*The people of this State have a right to empower, and do hereby fully empower the legislature to authorize, from time to time, the several towns, parishes, bodies corporate or religious societies, within this State, to make adequate provision, at their own expense, for the* ***support and maintenance*** *of* ***public Protestant teachers of piety, religion, and morality***."

N.H. Const. art. VI (1784) (emphasis added). Obviously, had New Hampshire comprehended the Due Process Clause to apply the Establishment Clause to their state constitution, there would be a record of it. This is especially true because this provision of New Hampshire's constitution is structural in nature (i.e., it deals with legislative ***powers***). In fact, in December of 1868 (five months ***after*** the Fourteenth Amendment was ratified by the states) the New Hampshire Supreme Court reviewed Article VI. The New Hampshire Supreme Court upheld Article VI on the ground that the issue of religion was a matter resting exclusively with the states. In support of this position, the New Hampshire Supreme Court quoted from Justice Story's Commentaries, sections 1879 and 1873, respectively:

> "*. . . the whole power over the subject of religion is left exclusively to the State governments, to be acted upon according to their own sense of justice and the State constitutions . . .*"

Hale v. Everett, 53 N.H. 1 (1868).

Additional examples are evident in the constitutions of North Carolina and Tennessee. On July 4, 1868, North Carolina ratified the Fourteenth Amendment, which, at that time, had a provision in its state constitution that ***denied*** anyone "*who shall deny the being of Almighty God*" from holding any public office. N.C. Const. art. VI, sec. 5 (1868). On July 19, 1866, Tennessee ratified the Fourteenth Amendment. Similar to the North Carolina constitution, Tennessee's state constitution prohibited the holding of public office by "*any person who denies the being of God, or a future state of rewards and punishments . . .*" TN Const. art. IX, sec. 2 (1843).

Had the notion of applying the Establishment Clause to the states through the Fourteenth Amendment's Due Process Clause been contemplated during the debates in Congress or the state ratification debates, there most certainly would have been a record. In fact, no such record exists. Consequently, to assume that this *structural* change to the principle of Federalism should be either assumed or implied (as was done in *Everson*) would lead to unexpected constitutional consequences. This is precisely what has occurred in Establishment Clause jurisprudence, which has lead to the confusion created by *Lemon* and the resultant split among the federal circuit courts relative to applying *Lemon* in a rational and uniform manner.

There is further evidence that neither the Congress nor the states ratifying the Fourteenth Amendment intended to use the Due Process Clause to apply the Establishment Clause to the states. Specifically, in his annual message to Congress in 1875, President Grant proposed that Congress pass a constitutional amendment to prohibit the ***states*** from providing religious instruction in public schools and the expenditure of public funds to

benefit religious groups. 4 Cong. Rec., 44th Cong., 1st Sess., 175 (1875). This proposal was taken up by Senator James G. Blaine with the introduction of what is known as the "*Blaine Amendment*," which provided:

> *"No state shall make any law respecting an establishment of religion or prohibiting the free exercise thereof; and no money raised by taxation in any State for the support of public schools or derived from any public fund therefor, nor any public lands devoted thereto, shall ever be under the control of any religious sect or domination; nor shall any money so raised or lands so devoted be divided between religious sects or denominations."*

4 Cong. Rec., 44th Cong., 1st Sess., 5580 (1875) (emphasis added).

In addition to the mere introduction of the amendment, the congressional debates of the Blaine Amendment provide further proof that the 39th Congress did ***not*** intend the Fourteenth Amendment's Due Process Clause to apply the Establishment Clause to the states.

One interesting point about the members of the 44th Congress: twenty-three of them were members of the 39th Congress that adopted the Fourteenth Amendment, and at least fifty were members of the state legislatures that ratified the Fourteenth Amendment. O'Brien, William F., *The States and No Establishment: Proposed Amendments to the Constitution since 1789*, 4 Washburn L.J. 183, 208 n.105 (1965). Of particular interest are two members who were representatives in the 44th Congress were also senators in the 39th Congress that adopted the Fourteenth Amendment. These senators, Boutwell and Conkling, were also on the committee which drafted the Fourteenth Amendment. Meyer, Alfred W., *The Blaine Amendments and the Bill of Rights*, 64 Harv. L. Rev. 940, 941 n.14 (1950-1951). Clearly, had the Fourteenth Amendment's Due Process been intended to apply the Establishment Clause to the states they would have been quick to point that out.

Another interesting point about those members of the 44th Congress (who were also members of the 39th Congress) relates to their speeches during debate of the Blaine Amendment. For example, in the House, representative Banks (who was a member of the 39th Congress and voted for the Fourteenth Amendment) argued that the Blaine Amendment (not the Fourteenth Amendment) would alter the ***structure*** of the Constitution relative to the Establishment Clause:

> *"If the Constitution is amended so as to secure the object embraced in the principal part of this proposed amendment* ***it prohibits the States from exercising a power they now exercise.***"

4 Cong. Rec., 44th Cong., 1st Sess., 5191 (1875) (emphasis added). Thus, Representative Banks' statement demonstrates that the 39th Congress (of which he was a member) did not intend to change the structural relationship in the Constitution relative to the Establishment Clause. The Congressional Record does ***not*** reflect any House member stating that the Blaine Amendment was superfluous because the Fourteenth Amendment's Due Process Clause was intended to apply the Establishment Clause to the state governments. The House overwhelmingly passed the Blaine Amendment by a vote of 180 to 7.

Debates in the Senate on the Blaine Amendment provide the most comprehensive piece of evidence that the Fourteenth Amendment's Due Process Clause does ***not*** apply the Establishment Clause to the states. In this regard, Senator Frelinghuysen, a senator during the 39th Congress who voted for the Fourteenth Amendment, stated:

> *"I call attention to the Senate to the first alteration the House amendment makes to our Constitution. The first amendment to the Constitution, enacted shortly after the adoption of the Constitution, provides that – 'Congress shall make no law respecting the establishment of religion . . .'* ***This is an inhibition on Congress, and not the States****. The House article very properly extends the prohibition of the first amendment of the*

> *Constitution to the States . . . Thus the article as amended by the Senate prohibits,* ***for the first time****, from the establishment of religion . . .*"

Id. at 5561 (emphasis added).

The Blaine Amendment failed to garner the support required by the Constitution, but ***not*** because senators were of the opinion that the Fourteenth Amendment's Due Process Clause served to apply the Establishment Clause to the states. To the contrary, Senator Whyte, who voted ***against*** the Blaine Amendment, unequivocally explained his opposition to the amendment:

> "[T]*he first amendment to the Constitution* ***prevents*** *the establishment of religion by* ***congressional*** *enactment . . . and* ***leaves*** *the* ***whole power*** *for the propagation of it with the* ***States exclusively****; and so far as I am concerned I propose to leave it there also.*"

Id. at 5583 (emphasis added).

Finally, the ironic aspect of this Court's decision in *Everson* is that in voting against the Blaine Amendment, Senator Stevenson cited Thomas Jefferson's views as his authority:

> "Friend as he [Jefferson] was of religious freedom, he would never have consented that the States, which brought the Constitution into existence, upon whose sovereignty this instrument rests, which keep it within its expressly limited powers, should be degraded and that the Government of the United States, a Government of limited authority, the mere agent of the States with the prescribed powers, should undertake to take possession of their schools and of their religion . . ."

Id. at 5589 (emphasis added). Clearly, what Senator Stevenson was expressing is the principle of Federalism, which was very near and dear to Thomas Jefferson's heart.

One final point worth mentioning is that although the Blaine Amendment failed to pass the Senate, many states subsequently incorporated its provisions into their constitutions as a condition of admission to the union. As

demonstrated above, the Establishment Clause is a ***restraint*** on ***power,*** not a substantive individual right, which makes it structually impossible to incorporate through the Fourteenth Amendment's Due Process Clause. As so aptly put by a Harvard Law Review article:

> *"Trying to incorporate the Establishment Clause is analogous to trying to incorporate the Tenth Amendment, which reserves those powers neither delegated to the federal government nor forbidden to the states. The intent of the Tenth Amendment is to reaffirm that the states possess all power not delegated to the federal government by the Constitution. Incorporation of the Tenth Amendment would require that the states be stripped of all powers not specifically delegated to them, thereby completely inverting the Amendment's purpose. To the extent that the Establishment Clause is similar to the Tenth Amendment, its incorporation is similarly incoherent. Indeed, one scholar has suggested that the [Establishment] Clause be viewed as a specific application of the Tenth Amendment.*"

Rethinking the Incorporation of the Establishment Clause: A Federalist View, 105 Harv. L. Rev. 1700, 1709 (1992) (*"Rethinking Incorporation"*).

Based on the foregoing the Court should reconsider the advisability of applying the Establishment Clause to the states by way of the Selective Incorporation Doctrine.

C. IT IS NOT CONSTITUTIONALLY NECESSARY TO APPLY THE ESTABLISHMENT CLAUSE TO THE STATES BECAUSE ALL FIFTY STATES HAVE SOME FORM OF RESTRAINT ON THE ESTABLISHMENT AND/OR PREFERENCE OF RELIGION IN THEIR INDIVIDUAL STATE CONSTITUTIONS

Inevitably, the overruling of *Everson*, *Lemon*, and *Lemon*'s progeny begs the question: *What would fill the*

void created by the elimination of 57 years of Establishment Clause jurisprudence? Eliminating Supreme Court review of non-federal Establishment Clause cases would not result in jurisprudential chaos or offend well-settled principles of *stare decisis* and continuity. The reason for this is that all 50 states have clauses in their state constitutions which prohibit the type of state involvement with religion that this Court has elected to review in the almost 60 years since the incorporation of the federal Establishment Clause against the states in *Everson*. In light of the fact that each of the states have already ensured that there is no legitimate concern regarding the establishment of individual state religions, there is no subsequent justification for the United States Supreme Court to continue exercising jurisdiction over non-federal Establishment Clause cases.

Fears that failure to incorporate the Establishment Clause against the states would result in states establishing official religions are mislaid. Twelve of the fifty states have clauses in their constitutions which expressly prohibit the state legislature from establishing an official church.[11] In each of those twelve, the language of their "establishment clause" either mirrors or very closely resembles the federal version.

In addition, a total of thirty-three states have constitutional provisions which forbid the government from exhibiting any preference for one religion or another.[12] In one example, California's "*No Preference Clause*" reads, "Free exercise and enjoyment of religion without discrimination *or preference* are guaranteed."[13] Notably, that particular provision has been interpreted by federal courts

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[11] See App. 82-83, 86, 88, 89: AL, AK, CA, FL, HI, IA, LA, MT, NJ, SC, UT, and VA each have specific clauses forbidding a ***state's*** establishment of religion.

[12] App. 82-89: AL, AK, CA, CO, CT, DE, ID, IL, IN, KS, KY, ME, MA, MN, MS, MO, NE, NV, NH, NJ, NM, NY, NC, ND, OH, PA, SD, TN, TX, UT, VA, WV, and WI.

[13] CA Const. art. I, sec. 4 (emphasis added).

using the U.S. Supreme Court's Establishment Clause analysis as a touchstone.[14] This is evidence that the essential effect of that provision is the same as that of the federal Establishment Clause.

In fact, forty of the fifty states have either Establishment or No Preference Clauses, or both, in their state constitutions. Of the ten remaining states which do not have specific constitutional clauses relating to government establishment or preference for religion, seven have clauses which explicitly forbid expenditure of government funds for sectarian purposes. For example, the Arizona constitution uses the following verbiage in their so-called "No Aid" provision:

> "No public money or property shall be appropriated for or applied to any religious worship, exercise, or instruction, or to the support of any religious establishment."[15]

This clause, as well as those like it in other state constitutions, have the same fundamental purpose and effect as an Establishment or No Preference Clause; ensuring that the state not excessively entangle itself or advance or inhibit a particular religion.

The three remaining states, Maryland, Rhode Island, and Vermont, have not failed to address the issue of state involvement with religion. All have constitutional clauses prohibiting the legislature from enacting laws relating to compulsory church attendance or involuntary support of sectarian causes. While stopping short of including provisions which specifically forbid laws respecting the establishment of religion, these three states each have constitutional provisions restraining the government's ability to coerce belief from its citizens or force them to support a particular religious faith against their conscience.

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[14] *Carpenter v. City and County of San Francisco*, 93 F. 3d 627, 629 n.7 (9th Cir. 1996).

[15] AZ Const. art. II, sec. 12.

Article I Section 3 of the Vermont constitution declares in part:

> "That all persons have a natural and unalienable right, to worship Almighty God, according to the dictates of their own consciences and understandings, as in their opinion shall be regulated by the word of God; *and that no person ought to, or of right can be compelled to attend any religious worship, or erect or support any place of worship, or maintain any minister, contrary to the dictates of conscience . . .*"[16]

Likewise, the Maryland constitution holds:

> " . . . nor ought any person to be compelled to frequent, or maintain, or contribute, unless on contract, to maintain, any place of worship, or any ministry . . ."[17]

The Rhode Island constitution similarly propounds:

> "[We], therefore, declare that no person shall be compelled to frequent or to support any religious worship, place, or ministry whatever, except in fulfillment of such person's voluntary contract;"[18]

It is reasonable to conclude that such provisions would preclude the establishment of an official state religion in each of the above states, even absent a specific Establishment or No Preference Clause. Were one of the above state legislatures to attempt to establish an official state religion, that action would inherently result in "support [for] a place of worship," "compel[ing] a citizen to contribute" (via tax dollars), or "support [for] a religious worship, place, or ministry" in contravention of the constitutional clauses detailed above.

The importance of the state constitutional limitations on establishment of religion is evident when analyzing the potential impact of a decision by this Court deciding to

[16] VT Const. ch. I, art. 3 (emphasis added).

[17] MD Const. art. 36.

[18] RI Const. art. 1, § 3.

relinquish its practice of hearing allegations of state violations of the Establishment Clause. This Court will be comforted to know that should it decide to refuse to hear issues of alleged establishment clause violations by state actors, the well-settled principles of so-called "separation of church and state" would not crumble; on the contrary, they would remain as strong or stronger than when the Court exercised jurisdiction over those matters.

One method of illustrating this point is to examine several important historical Establishment Clause cases decided by this Court in light of the applicable state constitutional provisions rather than the Establishment Clause of the First Amendment. For instance, one can persuasively contend that the result in *Lemon* would not have been any different had the Pennsylvania State Supreme Court analyzed the Pennsylvania Nonpublic Elementary and Secondary Education Act under the terms of Pennsylvania's "No Preference Clause." The same consequence could have been achieved had the Pennsylvania Supreme Court decided that the Act exhibited a state preference "to [a] religious establishment" without ever necessitating United States Supreme Court review. Failure to invoke federal protections against state establishment of religion would not have resulted in an inability of aggrieved citizens to petition for redress; they could have simply done so under state constitution rather than the federal version.

Likewise, an examination of several other notable Supreme Court Establishment Clause decisions indicates similar results. In *School District of Abington Township, Pennsylvania. v. Schempp*, 374 U.S. 203 (1963) ("*Schempp*") the Pennsylvania Supreme Court again would have been competent to review allegations of inappropriate state entanglement with religion. Clearly, the state law at issue requiring that "passages from the Bible be read or that the Lord's Prayer be recited in the public schools of a State at the Beginning of each school day"[19] would have been

[19] *Schempp, supra.*

subject to intense scrutiny in light of the Pennsylvania constitution's mandate that "no preference shall ever be given by law to any religious establishments or modes of worship."[20] The same can likely be said for the City of Pittsburgh's holiday displays in *County of Allegheny v. ACLU Greater Pittsburgh Chapter*, 492 U.S. 573 (1989).

Other notable historical Establishment Clause cases provide further evidence that states are competent to police their own involvement with religion. In *Engel v. Vitale*, 370 U.S. 421 (1962), the issue of school prayer could have been analyzed under the state of New York's No Preference Clause, which states, "*The free exercise and enjoyment of religious profession and worship,* ***without discrimination or preference****, shall forever be allowed in this state to all humankind . . .*"[21] In addition, the practice of state mandated or state sponsored prayer in New York public schools would also have likely run afoul of another New York constitutional provision, Article 11, §3, which states in part:

> "Neither the state nor any subdivision thereof, shall use its property or credit or any public money, or authorize or permit either to be used, directly or indirectly, other than for examination or inspection, of any school or institution of learning wholly or in part under the control or direction of any religious denomination, *or in which any denominational tenet or doctrine is taught . . .*"[22]

As the foregoing demonstrates, it is clear that there is no legitimate concern that a decision by this Court "un-incorporating" the Establishment Clause of the First Amendment against the states would result in the establishment of individual state religions. In light of that fact, coupled with the history of the ratification of the First and

[20] PA Const. art. 1, § 3.

[21] NY Const. art. I, § 3.

[22] NY Const. art. 11, § 3 (emphasis added).

Fourteenth Amendments, there is no subsequent justification for the United States Supreme Court to continue exercising jurisdiction over non-federal Establishment Clause cases.

IV. CONCLUSION

A 1992 Harvard Law Review article argues that this Court should revisit the issue of whether the Establishment Clause should be applied to the states through the Fourteenth Amendment's Due Process Clause. One justification for non-incorporation of the Establishment Clause is the point of the original intent behind the adoption of the Establishment Clause:

> *"If the Establishment Clause is to be interpreted according to its original purpose, it is the* ***collective*** *intent of the people who ratified the Clause that must provide its meaning. In fact,* ***the only consensus*** *among the Framers of the First Amendment* [of which Jefferson was not one] *about the appropriate relationship between church and state* ***was to allow the states to decide the issue themselves****. Thus, the only theory of the Establishment Clause that accurately captures the collective intent of the Framers and reflects their divergent views is federalism. The language they chose accommodated both opponents and proponents of state establishments."*

Rethinking Incorporation, *supra*, 105 Harv. L. Rev. at 1705. The article makes this point because in *Everson*, Justice Black (who wrote the opinion) uses the Danbury Letter and other statements made by Madison and Jefferson to conclude that the Establishment Clause was intended to apply to the states. As stated in this article, and as demonstrated in this brief, *supra*, the record of the debates, including the statements of James Madison, demonstrate the complete opposite.

The Court should take this opportunity to reconsider the present state of Establishment Clause jurisprudence. In doing so, Pacific Justice urges that *Everson*, *Lemon*, and

Lemon's progeny be overruled because they are in direct contravention of the Establishment Clause and the Fourteenth Amendment's Due Process Clause. The Court should make clear that neither this Court nor any circuit or district court should apply the Establishment Clause to the states.

Respectfully submitted,

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[Picture Of Supreme Court]

Courtroom Friezes:
North and South Walls

INFORMATION SHEET

Cass Gilbert (1867-1934), architect of the Supreme Court building, selected Adolph A. Weinman (1870-1952), a respected and accomplished Beaux-Arts architectural sculptor, to design the friezes for the Courtroom during 1931 and 1932. Weinman's training emphasized a correlation between the sculptural subject and the function of the building. Gilbert relied on him to choose the subjects and figures that best reflected the function of the Supreme Court building. Faithful to classical sources and drawing from many civilizations, Weinman designed a procession of "*great lawgivers of history*" for the North and South walls to portray the development of law. Each frieze measures 40 feet long by 7 feet, 2 inches high and is made of ivory vein Spanish marble.

Weinman's sculpture begins on the south wall frieze with *Fame* and moves from **left to right.** Included among the great lawgivers are some allegorical figures whose names are included under the photographs in ***Italics.***

App. 2

Menes (c. 3200 B.C.) First King of the first dynasty of ancient Egypt. He unified Upper and Lower Egypt under his rule and is one of the earliest recorded lawgivers. Menes is shown in the frieze holding the *ankh,* an Egyptian symbol for life.

Hammurabi (c. 1700s B.C.) King of Babylon credited with founding the Babylonian Empire. He is known for the Code of Hammurabi, one of the earliest known legal codes. The first stone of the Code depicts him receiving the law from the Babylonian Sun God.

Moses (c. 1300s B.C.) Prophet, lawgiver and judge of the Israelites. Mosaic Law is based on the Torah, the first five books of the Old Testament. Moses is depicted in the frieze holding two overlapping tablets, written in Hebrew. Commandments six through ten are partially visible.

Solomon (c. 900s B.C.) King of Israel and renowned judge. His name, meaning "figure of the wise man," has become synonymous with "judicial wisdom."

Lycurgus (c. 800 B.C.) Legislator of Sparta. Lycurgus is credited with being one of the reformers of Sparta's constitution. He left Sparta after convincing the Spartan leadership not to change his laws until he returned, but he never did.

Solon (c. 638-558 B.C.) Athenian lawgiver. He was appointed *archon,* an officer of state, and was charged with remodeling the Athenian constitution in 594 B.C. He was instrumental in codifying and reforming Athenian law, often revising the laws of Draco. His name has come to mean "a wise and skillful lawgiver."

Draco (c. 600s B.C.) One of Solon's legal predecessors in Athens. Around 620 B.C., he committed an Athenian code

of laws to paper for the first time. His code included many strict penalties and death sentences, often for what seemed to be minor offenses. Thus, the word "draconian," meaning harsh or cruel, is derived from his name.

Confucius (551-478 B.C.) Chinese philosopher whose teachings stressed harmony, learning and virtue. Within 300 years of his death, the Chinese State adopted his teachings as the basis for government. Although officially abandoned by the Chinese government in 1912, Confucianism continues to have an influence throughout the world.

Octavian (63 B.C.-14 A.D.) or Augustus. First Emperor of the Roman Empire. He brought widespread reforms to many facets of Roman life. He supported the concept of using previous opinions of leading jurists to aid in determining new disputes.

The north wall frieze proceeds from **right to left,** starting with Philosophy:

Justinian (c. 483-565) Byzantine Emperor from 527 until his death. He ordered the codification of Roman law and published *Corpus Juris Civilis.* This work was instrumental in preserving Roman law and encompassed what has become known as the Justinian Code.

Muhammad (c. 570-632) The Prophet of Islam. He is depicted holding the Qur'an. The Qur'an provides the primary source of Islamic Law. Prophet Muhammad's teachings explain and implement Qur'anic principles. The figure above is a well-intentioned attempt by the sculptor, Adolph Weinman, to honor Muhammad and it bears no resemblance to Muhammad. Muslims generally have a strong aversion to sculptured or pictured representations of their Prophet.

Charlemagne (c. 742-814) or Charles I (the Great). King of the Franks and Roman Emperor. Charlemagne was reportedly an avid student who became an eloquent speaker of several languages and supported learning and literature throughout his realm. Under his leadership, most of Western Europe was united by 804 becoming the foundation for the Holy Roman Empire. He was also a reformer of legal, judicial and military systems.

King John (1166-1216) born John Lackland. King of England from 1199 until his death. His policies and taxation caused his barons to force him to sign the Magna Carta. This document, depicted in the frieze as a scrolled document in his hand, is regarded as the foundation of constitutional liberty in England.

Louis IX (c. 1214-1270) King of France who was canonized as St. Louis in 1297. He led the 7th and 8th Crusades and created the first court of appeals known as the "Curia Regis" or "King's Court."

Hugo Grotius (1583-1645) or Huig de Groot. Dutch scholar, lawyer and statesman. He is depicted holding *De jure belli ac pacis* (*Concerning the Law of War and Peace*), one of the first books on international law, which he wrote in 1625.

Sir William Blackstone (1723-1780) English law professor and jurist. He wrote *Commentaries on the Law of England* (1765-1769), which has had a major influence on English and American law.

John Marshall (1755-1835) Fourth Chief Justice of the United States, from 1801 to 1835. His 1803 opinion in *Marbury v. Madison* stated that the Supreme Court of the United States had the authority to determine the constitutionality of a law, establishing the power of judicial review for the Court.

Napoleon (1769-1821) Emperor of France from 1804 to 1815. He ordered and directed the recodification of French law into what became known as the Code Napoleon or Civil Code. Published in 1804, this code formed the basis for modern civil law. Napoleon, at St. Helena, is reported to have said, *"My glory is not to have won forty battles; for Waterloo's defeat will destroy the memory of as many victories. But what nothing will destroy, what will live eternally, is my Civil Code."*

Office of the Curator • Supreme Court of the United States

All photographs by Franz Jantzen unless otherwise noted.
Collections of the Supreme Court of the United States.

Updated: 8/18/2000

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Attorneys for Plaintiff Stephen J. Williams

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
CALIFORNIA SAN JOSE DIVISION

STEPHEN J. WILLIAMS,

Plaintiff,

v.

PATRICIA VIDMAR, Principal of Stevens Creek School, WILLIAM BRAGG, Superintendent of Cupertino Union School District, PEARL CHENG, BEN LIAO, JOSEPHINE LUCEY, GARY MCCUE, GEORGE TYSON, Board members of Cupertino Union School District, in their official and individual capacities,

Defendants.

CASE NO. C-04-4946

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND DAMAGES

(Filed Nov. 22, 2004)

Comes now the plaintiff, Stephen J. Williams, by and through counsel, pursuant to the Federal Rules of Civil Procedure and against the Defendants avers the following:

I.

INTRODUCTION

1. This case is about the First Amendment rights of Stephen Williams, a public school teacher and orthodox Christian. The Defendants have systematically censored Mr. Williams' choices of supplemental handouts because those handouts – chiefly excerpts of primary source

documents from America's founding era, or from state constitutions – contain some religious content. Defendants have ordered Mr. Williams (but no other current teacher) – to not distribute any supplemental handout unless it appears on a list of authorized handouts that applies only to Mr. Williams. This is a violation of the First and Fourteenth Amendments to the United States Constitution for which Mr. Williams seeks declaratory relief, injunctive relief, nominal damages, costs and attorneys' fees.

II.

JURISDICTION AND VENUE

2. This action arises under the United States Constitution, particularly the First and Fourteenth Amendments; and under federal law, particularly 28 U.S.C. §§ 2201, 2202 and 42 U.S.C. §§ 1983 and 1988.

3. This Court has original jurisdiction over these federal claims by operation of 28 U.S.C. §§ 1331 and 1343.

4. This Court has authority to issue the requested declaratory relief under 28 U.S.C. § 2201.

5. This Court has authority to issue the requested injunctive relief under 28 U.S.C. § 1343(a)(3).

6. This Court is authorized to award the requested damages under 28 U.S.C. § 1343(a)(3).

7. This Court is authorized to award attorneys' fees under 42 U.S.C. § 1988.

8. Venue is proper under 28 U.S.C. § 1391 in the Northern District of California because this claim arose there, and the parties reside within the District.

III.

INTRADISTRICT ASSIGNMENT

9. Pursuant to L.R. 3-2(e) & 3-5, this case is a civil rights case, in a non-excepted category, suitable for assignment to the San Jose division because the civil action arose in Santa Clara County.

IV.

IDENTIFICATION OF PARTIES

10. Plaintiff Stephen J. Williams is a resident of Mountain View, California.

11. Defendant Patricia Vidmar is Principal of Stevens Creek School, within the Cupertino Union School District. Among other things, this Defendant is responsible for setting the policies at Stevens Creek School and implementing the policies of Stevens Creek School and the Cupertino Union School District.

12. Defendant William Bragg is Superintendent of Cupertino Union School District. Among other things, this Defendant is responsible for setting and implementing policies for schools within the Cupertino Union School District.

13. Defendant Pearl Cheng is a member of the Board of Education of the Cupertino Union School District. Among other things, this Defendant is responsible for setting policies for schools within the Cupertino Union School District.

14. Defendant Ben Liao is a member of the Board of Education of the Cupertino Union School District. Among other things, this Defendant is responsible for setting

policies for schools within the Cupertino Union School District.

15. Defendant Josephine Lucey is a member of the Board of Education of the Cupertino Union School District. Among other things, this Defendant is responsible for setting policies for schools within the Cupertino Union School District.

16. Defendant Gary McCue is a member of the Board of Education of the Cupertino Union School District. Among other things, this Defendant is responsible for setting policies for schools within the Cupertino Union School District.

17. Defendant George Tyson is a member of the Board of Education of the Cupertino Union School District. Among other things, this Defendant is responsible for setting policies for schools within the Cupertino Union School District.

18. Each Defendant is sued in his or her individual and official capacities.

V.

STATEMENT OF FACTS

Background

19. Plaintiff Stephen J. Williams currently teaches fifth grade at Stevens Creek School ("the School"), which is part of Cupertino Union School District ("the District").

20. Defendant Patricia Vidmar is the Principal of the School.

21. Mr. Williams has taught for eight years in the District.

22. Mr. Williams has taught fifth grade for six years.

23. History and Social Studies are among the subjects that Mr. Williams teaches the fifth grade students at the School.

Conflicts Over Handouts and Lessons

24. The District's fifth grade History textbook is entitled "A New Nation: Adventures in Time and Place" ("textbook").

25. Mr. Williams frequently supplements the district-approved textbook with curriculum-related handouts for his students to understand the topic under study.

26. It is not uncommon for teachers within the District to supplement District textbooks with curriculum-related handouts.

27. Mr. Williams chooses supplemental handouts that, in his judgment as a professional educator, satisfy the California History-Social Science content standards for the fifth grade.

28. Many teachers employed by the District supplement the textbooks for each subject with curriculum-related handouts.

29. In his judgment as a professional educator, Mr. Williams cannot satisfy the California History-Social Science content standards for the fifth grade if he does not supplement the textbooks with handouts.

30. When teaching the history of the founding era, Mr. Williams includes original source documents from the founding era, or excerpts from such documents, as his supplemental handouts.

31. When teaching the history of the founding era, many of the documents Mr. Williams distributes as handouts contain references to God and Christianity.

32. Many original source documents from the founding era contain references to God and Christianity.

33. On or about May 19, 2004, Principal Vidmar ordered Mr. Williams to submit all of his lesson plans and supplemental handouts to her for review in advance.

34. Principal Vidmar reviewed Mr. Williams' lesson plans and curriculum-related handouts to determine whether either had religious content such that they would not be permissible for use in or for Mr. Williams' classes.

35. Since approximately May 19, 2004, Principal Vidmar has systematically rejected Mr. Williams' proposed lesson plans and proposed supplemental handouts that contain references to God or Christianity.

36. Mr. Williams is aware that one parent has complained about one handout during a lesson on Presidential Proclamations.

37. Mr. Williams gave a supplemental handout consisting of President George W. Bush's Proclamation on the National Day of Prayer as an example of a Presidential Proclamation. A true and correct copy of this handout is attached as Exhibit A.

38. Other teachers are not required to submit all of their lesson plans and supplemental handouts to Principal Vidmar in advance.

39. Other teachers are permitted to show films and distribute handouts containing references to God.

40. Principal Vidmar has rejected Mr. Williams' attempts to distribute, among others:

a. Excerpts from the "Frame of Government of Pennsylvania" by William Penn;

b. Excerpts from the Declaration of Independence;

c. Excerpts from various state constitutions;

d. A handout entitled "What Great Leaders Have Said About The Bible";

e. "The Rights of the Colonists" by Samuel Adams;

f. Excerpts from George Washington's journal;

g. Excerpts from John Adams' diary;

h. Excerpts from "The Principles of Natural Law" by Jean-Jacques Burlamaqui;

i. A handout entitled "Fact Sheet: Currency & Coins – History of 'In God We Trust.'"

True and correct copies of these handouts are attached as Exhibits B-J.

41. Mr. Williams intended to distribute these handouts to explain 1) the role of religion at the nation's founding; 2) the religious references in several founding documents including the Declaration of Independence; and

3) the reasons for the Establishment Clause in the First Amendment.

42. Principal Vidmar rejected the documents referenced in Paragraph 41 because of their religious content.

43. Approximately five percent of all of Mr. Williams' supplemental handouts distributed throughout the school year contain references to God or Christianity.

44. In November 2003, Mr. Williams taught a lesson on the origins of Thanksgiving.

45. In December 2003 and January 2004, Mr. Williams taught lessons on the origins of religious holidays, including Christmas, Ramadan, Diwali, Hanukah, and the Chinese New Year.

46. Principal Vidmar did not object to the lessons about Thanksgiving or the religious holidays.

47. In April 2004, Mr. Williams intended to teach a lesson about the religious holiday of Easter.

48. Principal Vidmar ordered Mr. Williams not to teach a lesson about Easter.

49. Principal Vidmar gave this order because Easter is a Christian religious holiday.

50. Mr. Williams is a Christian, and generally adheres to orthodox Christian beliefs as prescribed by the Bible.

51. One of Mr. Williams' Christian beliefs is that he must submit to governing authorities.

52. Mr. Williams understands and admits that he is not permitted to "proselytize" or seek to convert his students to Christian beliefs during instructional time.

53. Mr. Williams does not attempt to proselytize his students during instructional time.

54. Other than the religious references that occasionally occur in his lesson plans and supplemental handouts during the school year, Mr. Williams does not distribute religious material during instructional time.

55. Other than religious references that occasionally occur in his lesson plans and supplemental handouts, or in response to questions by students, Mr. Williams does not discuss religion during instructional time.

56. Mr. Williams has distributed his chosen handouts during previous school years without any problems.

57. Principal Vidmar is aware that Mr. Williams is a Christian.

58. At the beginning of the 2003-04 school year, Principal Vidmar communicated to Mr. Williams her concern that Mr. Williams would try to proselytize his Christian faith to the students in his classroom.

59. Mr. Williams communicated to Defendant Vidmar that, because of his religious belief regarding submission to authority, he does not attempt to proselytize his students during instructional time.

California State Law

60. California Education Code § 51511 states:

> Nothing in this code shall be construed to prevent, or exclude from the public schools, references to religion or references to or the use of religious literature, dance, music, theatre, and visual arts or other things having a religious significance when such references or uses do not constitute instruction in religious principles or aid to any religious sect, church, creed, or sectarian purpose and when such references or uses are incidental to or illustrative of matters properly included in the course of study.

61. On its face, California Educational Code § 51511 permits, *inter alia,* "religious literature" and "other things having a religious significance" as part of the school curriculum.

California's History-Social Science Content Standards

62. The California Department of Education has promulgated content standards for fifth grade curriculum taught in California public schools, including the District's schools.

63. The District's schools are required to educate fifth grade students according to the State's content standards.

64. The California Department of Education has published the content standards governing history and the social sciences as part of a book entitled "History-Social Science Framework for California Public Schools Kindergarten through Grade Twelve" ("Framework").

65. In that book, the History-Social Science Content Standards for Grade Five are entitled "United States History and Geography: Making a New Nation." A true and correct copy of these standards (including the cover pages of the Framework) is attached as Exhibit K.

66. The introduction to the History-Social Science Content Standards for Grade Five state: "This course focuses on one of the most remarkable stories in history: the creation of a new nation . . . founded on the Judeo-Christian heritage. . . ." Ex. K at 64.

67. This nation was founded on the Judeo-Christian heritage.

68. Standard 5.2.2 states "Explain . . . the reasons Europeans chose to explore and colonize the world (e.g., the Spanish Reconquista, the Protestant Reformation, the Counter Reformation)." *Id.* at 71.

69. Standard 5.4 requires that "Student understand the political, religious, social, and economic institutions that evolved in the colonial area." *Id.* at 72.

70. Standard 5.4.2 states: "Identify the major individuals and groups responsible for the founding of the various colonies and the reasons for their founding (e.g., . . . William Penn, Pennsylvania. . . .)." *Id.*

71. Standard 5.4.3 states: "Describe the religious aspects of the earliest colonies (e.g., Puritanism in Massachusetts, Anglicanism in Virginia, Catholicism in Maryland, Quakerism in Pennsylvania)." *Id.*

72. Standard 5.4.4 states: "Identify the significance and leaders of the First Great Awakening, which marked a shift in religious ideas, practices, and allegiances in the

colonial period, the growth of religious toleration, and free exercise of religions." *Id.*

73. Standard 5.5.1 states: "Understand how political, religious, and economic ideas and interests brought about the Revolution. . . . " *Id.*

74. Standard 5.7.6 states: "Know the songs that express American ideals (e.g., 'America the Beautiful,' 'The Star Spangled Banner')."

75. The Framework contains a list of "analysis skills" in conjunction with the content standards. Ex. K at 75.

76. The analysis skills under "Research, Evidence, and Point of View" require that:

> 1. Students differentiate between primary and secondary sources.
>
> 2. Students pose relevant questions about events they encounter in historical documents, eyewitness accounts, oral histories, letters, diaries, artifacts, photographs, maps, artworks, and architectures.
>
> 3. Students distinguish fact from fiction by comparing documentary sources on historical figures and events with fictionalized characters and events.

Id.

77. On their face, the California History-Social Science Content Standards require, *inter alia,* teaching about religion.

78. Appendix C of the Framework discusses teaching about religion in public schools. *Id.* at 203.

79. Appendix F of the Framework discusses the importance of using primary source documents. *Id.* at 214.

Cupertino Union School District Content Standards

80. The District has promulgated content standards for fifth grade curriculum taught in District schools.

81. Standard 4 under "United States History and Geography: Making a New Nation" requires that: "Students understand the political, religious, social, and economic institutions that evolved in the colonial era."

82. On their face, the District's content standards require, *inter alia,* that students receive objective instruction about religion.

Textbook Inadequacies

83. The District's textbook contains nothing about the Spanish Reconquista, the Protestant Reformation, or the Counter Reformation.

84. The District's textbook contains the following statements in its entire discussion about the Great Awakening: "The Great Awakening's goal was to strengthen people's religious beliefs and feelings. It widened the differences between several Protestant groups."

85. The textbook contains nothing on the religious ideas that motivated the Revolution or the religious origins of the concepts in the Declaration of Independence and the Bill of Rights.

86. The textbook contains nothing on the state constitutions' influence on the federal constitution.

87. These inadequacies, among others, are the reasons that Mr. Williams supplements the textbook with handouts in order to fulfill California's History-Social Science Content Standards.

VI.

STATEMENTS OF LAW

88. Each and all of the acts alleged herein were done by Defendants under the color and pretense of state law, statutes, ordinances, regulations, customs, usages, and policies of Cupertino Union School District, Santa Clara County, and the State of California.

89. Teachers do not shed their constitutional rights at the schoolhouse gate. *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969).

90. Teachers have academic freedom rights within the reasonable limits of the state's education content standards.

91. Defendants have a duty to set education policies and local content standards in accordance with the state's education content standards.

92. By their policy of excluding all of Mr. William's handouts containing religious references, Defendants have failed to meet their duty.

93. Unless and until the enforcement of the Defendants' religiously discriminatory policy is enjoined, the

Plaintiff will suffer and continue to suffer irreparable harm to his federal constitutional rights.

VII.

FIRST CAUSE OF ACTION – VIOLATION OF THE EQUAL PROTECTION CLAUSE UNDER THE UNITED STATES CONSTITUTION

94. The allegations contained in all preceding paragraphs are incorporated herein by reference.

95. The Equal Protection Clause requires that the government treat similarly-situated persons equally.

96. The Defendants allowed similarly-situated teachers to include religious expression in their lessons and supplemental handouts.

97. The Defendants do not require similarly-situated teachers to submit their lesson plans and supplemental handouts in advance.

98. The Defendants do not limit similarly-situated teachers' choices of supplemental handouts as they have limited Mr. Williams' choices.

99. The Defendants have treated Mr. Williams differently based on the exercise of his fundamental right to free speech.

100. Defendants have no compelling interest to justify their unequal treatment of Mr. Williams.

101. The Defendants' policy therefore violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

WHEREFORE, Plaintiff respectfully prays that the Court grant the relief set forth hereinafter in the prayer for relief.

VIII.

SECOND CAUSE OF ACTION - VIOLATION OF THE RIGHT TO FREEDOM OF SPEECH UNDER THE UNITED STATES CONSTITUTION

102. The allegations contained in all preceding paragraphs are incorporated herein by reference.

103. Speech about religion is protected by the First and Fourteenth Amendments to the United States Constitution.

104. Speech about religion is necessary to fulfill the state teaching standards.

105. Defendants have excluded Mr. Williams' speech because of its religious content and viewpoint.

106. Specifically, Defendants have excluded the viewpoint that this nation has a Christian history.

107. By this exclusion, Defendants have, *inter alia*, limited Mr. Williams' academic freedom – his ability to speak and teach freely in accordance with the state educational standards.

108. Regardless of the type of forum (traditional, designated or limited, or nonpublic fora), the government may not discriminate based upon the viewpoint expressed by the speaker.

109. The Defendants have no compelling government interest to justify their discriminatory treatment of the Plaintiff.

110. The Defendants' actions therefore violate the Free Speech Clause of the First Amendment to the United States Constitution as incorporated and applied to the states under the Fourteenth Amendment.

WHEREFORE, Plaintiff respectfully prays that the Court grant the relief set forth hereinafter in the prayer for relief.

IX.

THIRD CAUSE OF ACTION – VAGUENESS

111. The allegations contained in all preceding paragraphs are incorporated herein by reference.

112. Defendants' policy and practice do not give adequate notice as to what conduct is prohibited.

113. Defendants' policy and practice vest unfettered discretion in school officials to control teacher speech based on its content and viewpoint.

114. Defendants' policy and practice contradict state law.

115. Defendants have no compelling interest to justify their policy and practice.

116. Defendants' policy and practice are therefore void for vagueness in violation of the First and Fourteenth Amendments to the United States Constitution.

WHEREFORE, Plaintiff respectfully prays that the Court grant the relief set forth hereinafter in the prayer for relief.

X.

FOURTH CAUSE OF ACTION – VIOLATION OF THE ESTABLISHMENT CLAUSE UNDER THE UNITED STATES CONSTITUTION

117. The allegations contained in all preceding paragraphs are incorporated herein by reference.

118. The Defendants' policy and practice excludes Mr. Williams' religious expression.

119. The Defendants' policy requires that school officials systematically and regularly scrutinize historical documents to determine whether the officials consider the documents to have religious content that the officials consider impermissible within their school.

120. The Defendants' policy demonstrates impermissible hostility towards religion.

121. Defendants have no compelling interest that would justify their hostility towards religion.

122. The Defendants' policy therefore violates the Establishment Clause of the First Amendment to the United States Constitution as incorporated and applied to the states under the Fourteenth Amendment.

WHEREFORE, Plaintiff respectfully prays that the Court grant the relief set forth hereinafter in the prayer for relief.

XI.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the following relief:

A. That this Court preserve the pre-litigation status quo by preliminarily enjoining the Defendants from ceasing their practice of allowing teachers to distribute curriculum-related supplemental handouts;

B. That this Court preliminarily and permanently enjoin the Defendants from enforcing their policy and practice of suppressing Mr. Williams' use of curriculum-related supplements on the basis that they contain religious content or references;

C. That this Court enter declaratory judgment stating that the Defendants' policy and practice is facially unconstitutional and violates the Plaintiff's rights as guaranteed under the First and Fourteenth Amendments to the United States Constitution;

D. If the policy is not declared facially unconstitutional, that this Court enter a declaratory judgment stating that the policy is unconstitutional as applied to the Plaintiff and violates the Plaintiff's rights guaranteed under the First and Fourteenth Amendments to the United States Constitution;

E. That this Court award Plaintiff nominal damages arising from the acts of the Defendants as an important vindication of the constitutional rights at stake;

F. That this Court award Plaintiff his costs and expenses of this action, including reasonable attorneys' fees, in accordance with 42 U.S.C. § 1988 and other applicable law;

G. That this Court grant such other and further relief as the Court deems equitable, just, and proper;

H. That this Court adjudge, decree and declare the rights and other legal relations of the parties to the subject matter here in controversy, in order that such declarations shall have the force and effect of final judgment; and

I. That this Court retain jurisdiction of this matter as necessary to enforce the Court's orders.

Respectfully submitted on this, the 22nd day of November, 2004,

Attorney for Plaintiff,

By: /s/ Terry L. Thompson
Terry L. Thompson

CERTIFICATION OF INTERESTED ENTITIES OR PERSONS

Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

Respectfully submitted on this, the 22nd day of November, 2004.

By: /s/ Terry L. Thompson
Terry L. Thompson

VERIFICATION

I, Stephen J. Williams, a citizen of the United States and a resident of the State of California, have read the foregoing Verified Complaint for Declaratory and Injunctive Relief and Damages and declare under the penalty of

perjury under the laws of the State of California that the foregoing is true and correct.

Dated this 28 day of October, 2004

/s/ Stephen J. Williams 6/20/04
Stephen J. Williams

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EXAMPLES OF HOSTILITY TO RELIGIOUS EXPRESSION IN THE PUBLIC SQUARE

REPORTED CASES, MEDIA ARTICLES, UNREPORTED CASES, AND LAW REVIEW ARTICLES

(Some of these cases were resolved correctly, many not, but they all show the hostility to religious freedom currently ongoing nationwide)

- *From Lynn Lucas Middle School in Houston, Texas:*

  A schoolteacher trashed two students' Truth for Youth Bibles and took the students to the principal's office where she threatened to call Child Protective Services on their parents for permitting them to bring their Bibles. Later at the same school, different officials threw away students' book covers with the Ten Commandments, claiming the commandments were hate speech and could offend students.

- *Girl Barred from Singing 'Kum Ba Yah,'* Washington Post, Aug. 14, 2000 at A2.

  An eight-year-old girl was barred from singing "Kum Ba Yah" at camp in a talent show because the song included the words "My Lord." The camp director said, " . . . You have to check your religion at the door."

- Conrad deFiebre, *Suit Claims Man's Religious Freedom is Being Thwarted; A Revenue Employee Says He's Not Allowed to Display Signs on His Car or Cubicle,* Star Tribune (Minneapolis), July 2, 2004, at 3B.

  A Minnesota state Department of Revenue employee Alan Blackburn was barred from parking his car in the state parking lot because of religious and political stickers placed on the car (examples include: "God is a loving and caring God," "God defines marriage as a union between a man and a woman. He also says sex is to be enjoyed between a husband and wife only"). A lawsuit was filed in support of Blackburn's rights to place whatever stickers he wants on his car.

- Joan Little, *City Schools Issue Rules About Students, Religion,* The St. Louis Post-Dispatch, July 11, 1996.

  Elementary school student Raymond Raines was "caught" praying over his meal at school. He was lifted from his seat and reprimanded in front of all the other students. He was then taken to the principal who ordered him to cease praying in school.

STUDENTS

- *C.H. v. Oliva,* 226 F. 3d 198 (3d Cir. 2000).

  Zachary Hood brought his Beginner's Bible to school to share a story about Jacob and Esau called "A Big Family" as part of class activities, but Zachary's teacher refused to allow the story to be read because it was religious. Zachary's mom filed a lawsuit to allow Zachary to share his story just as the other students were permitted to share theirs.

- *Walz v. Egg Harbor Township,* 342 F.3d 271 (3d Cir. 2003).

  A pre-kindergarten student, Daniel Walz, was prevented from giving out pencils with the message "Jesus Loves the Little Children" engraved on them and later as a first grader was prevented from distributing candy canes with "The Candy Maker's Witness" attached to the candy. A lawsuit was filed to protect Daniel's rights to give gifts at school just like other children could, but the Third Circuit refused to uphold Daniel's rights to give his gifts and instead decided in favor of the school's discrimination.

- *Denooyer v. Merinelli,* 1993 U.S. App. LEXIS 20606 (August 3, 1993).

  When elementary student Kelly Denooyer was selected as her class' VIP of the Week, she brought a video of her singing a solo at church to share with her class. But the teacher refused to play the tape for a variety of reasons, including concern about the videotape's religious message. A lawsuit was filed to protect Kelly's rights, but the court determined that Kelly's free expression rights were not violated by the censorship of her video.

- *Settle v. Dickson County Sch. Bd.,* 53 F.3d 152 (6th Cir. 1995).

  Ninth grader Brittney Settle selected Jesus Christ as the topic for her open research project, but her teacher later refused to approve the subject and gave Brittney a zero for her grade and did not permit her to submit another project. A lawsuit was filed to protect Brittney's free expression rights, but the court refused to uphold Brittney's rights and found in favor of the school.

- *Westfield High Sch. L.I.F.E. Club v. City of Westfield,* 249 F. Supp. 2d 98 (D. Mass. 2003).

  A student started a religious club and wanted to hand out candy canes with a religious message at school. The school denied the students' permission and the students were suspended for distributing their candy canes. The students were forced to file suit in federal court in order to enforce their right to give candy to classmates without facing suspension.

- *Duran v. Nitsche,* 780 F. Supp. 1048 (E.D. Pa. 1991).

  Fifth grader Diana Duran was a member of the Academically Talented Program, where she was assigned an independent study project. She completed the project on the Power of God as originally approved by her teacher. However, when doing her research (including a student survey of classmates' religious beliefs) and attempting to present her project to the class (as part of the assignment), school officials intervened and prevented Diana from successfully completing the project. Diana along with her guardians filed a lawsuit to protect her First Amendment freedoms, but the court did not uphold her rights and upheld the school's action, saying she had no such rights in the classroom.

- *Hsu v. Roslyn Union Free Sch. Dist.,* 85 F.3d 839 (2d Cir. 1996).

  Students Emily and Timothy Hsu wanted to form a student Bible club at school, but were denied club recognition because the students insisted that the club have a policy permitting only Christians to serve as officers. A lawsuit was filed to protect the clubs' right to pick leaders in accordance with their faith. The court only permitted certain leadership positions to have a requirement relating to the member's faith

and would not permit all leadership positions to have such a requirement.

- *Zobrest v. Catalina Foothills Sch. Dist.*, 509 U.S. 1 (1993)

  Through the Individuals with Disabilities Education Act (IDEA), a deaf student was entitled to access to a sign-language interpreter during the school day, so the student asked the Catalina Foothills School District to provide such an interpreter. The student attended Catholic school, and the district refused to provide an interpreter. A lawsuit had to be filed to uphold this religious student's rights.

- *Axson-Flynn v. Johnson*, 356 F.3d 1277 (10th Cir. 2004).

  University of Utah acting student Christina Axson-Flynn withdrew from the acting program and left the university after her instructors heavily pressured her to perform scenes that required her to say profane words. Axson-Flynn was a Mormon and had informed the instructors of her religious objections to profane phrases during her audition for acceptance to the acting program.

- *From Northwest Elementary School in Massachusetts*

  Seven-year-old Laura Greska brought a book called *The First Christmas* to fulfill an assignment that asked students to share with the class about their family's Christmas traditions, but was forbidden from sharing it with the class because it was "religious" as it centered on Jesus Christ's birth.

- *From Walker County School District in Birmingham, Alabama:*

  Eleven-year-old Kandice Smith was told that she was not permitted to wear her cross to school because it would violate the dress code at Curry Middle School.

The dress code was devised to hinder gang activity at the school, and only after a lawsuit was filed did the school finally decided to incorporate an exception compatible with the Alabama Religious Freedom Amendment.

- *From Kettering City School District, Ohio:*

  A teacher prevented a kindergartener from giving out bags of jelly beans with a religious poem to classmates around Easter 2003. She was trying to uphold a school policy against students distributing religious literature in the classroom, though secular messages are permitted. A lawsuit was filed in U.S. District Court in Ohio.

- *From the Flagstaff, Arizona Unified School District:*

  Sixth-grader Caitlin Ribelin wanted to tell classmates about her church youth group, but her school principal prevented her from doing so because of school policies preventing distribution of religious materials not authored by students. A lawsuit had to be filed against the school district to allow religious literature to be treated the same way that secular literature is treated.

- *From Muskogee Public School District, Oklahoma:*

  An 11-year-old Muslim student was suspended for wearing her religious hair covering to school, in violation of the school's dress code. A lawsuit was filed to protect the student's religious rights in federal court in Oklahoma, and the school district finally decided to settle after the U.S. Department of Justice opened an investigation.

- *From Cushing Elementary School, Delafield, Wisconsin:*

  Morgan Nyman, an eight-year-old student was denied the opportunity to share the valentines that she had

made by hand with her classmates because the Valentines included religious messages, which would "violate the separation of church and state" if little Morgan was permitted to hand them out. A lawsuit was filed to protect Morgan's rights, and the Kettle Moraine School District only relented after litigation, deciding to allow Morgan to pass the valentines out.

- *From the Boulder Valley School District, Colorado:*

  For a class project, students were asked to select their favorite book for an oral book report. Eleven-year-old student Elizabeth Johnson selected the Bible, specifically Exodus, to share with the class, but the teacher rejected the student's choice, saying that the Bible may be "offensive" to some. Additionally, Elizabeth was told that she could not bring her Bible to school. An attorney became involved and sent a letter to the district explaining how Elizabeth's rights had been violated, and a television station contacted the school about the events. Twenty minutes after the news called, the district relented and permitted Elizabeth to select the Bible as the subject of her book report.

- *From Miami-Dade, Florida:*

  Students tried to distribute business-sized cards to other students on the Miami-Dade Community College campus; the cards had a number for people to call where they could hear a recorded message about Jesus Christ. Campus security officers approached and told the students that they couldn't pass out the cards. Later, the students returned to resume handing out their cards and were approached by security officers and an administration official. When the students tried to leave, more security officers were summoned as was a police officer who threatened to arrest the students. A lawsuit had to be filed to protect the students' rights, and the school was barred

from reviewing Christian literature and could prevent its distribution only in limited circumstances.

- *From Boca Raton School District, Florida:*

  Members of the Fellowship of Christian Athletes (FCA) were denied the opportunity to share a religious message on construction panels in the school as part of a beautification project. Though students were told that no profane or obscene messages were permitted, no policy was mentioned regarding religious messages. The students' messages were edited to eliminate "God" and "Jesus." A lawsuit was filed.

- *From Asa Adams School in Orono, Maine:*

  Third grader Gelsey Bostick wore a t-shirt and sweatshirt that said "Jesus Christ" on them, and her teacher asked her to turn both articles inside out because they were causing a commotion and offended one of the students. Furthermore, some students construed the words "Jesus Christ" as swear words. The school reversed itself only after a religious liberties law firm intervened.

STUDENT PRAYER

- *Goulba v. Sch. Dist. of Ripon,* 45 F.3d 1035 (7th Cir. 1995).

  After students recited the Lord's Prayer, on their own accord, before the opening of graduation ceremonies, student Nikki Goulba filed a civil contempt motion against the School District of Ripon and the Ripon High School principal, claiming that the officials violated a permanent injunction that prevented them from permitting prayer during school graduations.

- *ACLU v. Black Horse Pike Reg'l Bd. of Educ.*, 84 F.3d 1471 (3rd Cir. 1996).

  A lawsuit was filed challenging a school policy that permitted the graduating class to vote to determine if there would be student-led prayer during graduation ceremonies. The court struck down the policy, determining it violated the Establishment Clause and enjoined the school from permitting the prayer.

- *Adler v. Duval County Sch. Bd.*, 250 F.3d 1330 (11th Cir. 2001).

  Lawsuit filed to challenge a school policy permitting high school seniors to use a popular vote to select a graduation speaker who could deliver a message of their choosing, without approval by school officials. The offense was that some students would use their time of speech to express religious thoughts.

- *Candler v. Siegelman*, 230 F.3d 1313 (11th Cir. 2000).

  A principal and student filed suit to challenge an Alabama statute, which allowed student-initiated prayer during school events.

- *Geardon v. Loudon County Sch. Bd.*, 844 F. Supp. 1097 (E.D Va. 1993) (mem.).

  Parents and students filed a lawsuit challenging prayer at a high school graduation, and the court permanently enjoined the school from permitting prayer at graduation ceremonies.

- *Jones v. Clear Creek Indep. Sch. Dist.*, 977 F.2d 963 (5th Cir. 1992).

  A Clear Creek ISD parent filed suit to challenge a policy permitting high school seniors to select student volunteers to give nonsectarian, non-proselytizing invocations at graduation ceremonies.

- *Mellen v. Bunting*, 327 F.3d 355 (4th Cir. 2003).

  Two students brought suit challenging the practice of having a supper prayer at a military school in Virginia on the grounds that it violated the Establishment Clause and the court struck down the practice.

- *Santa Fe Indep. Sch. Dist. v. Doe*, 530 U.S. 290 (2000).

  A lawsuit was filed to challenge a school district policy permitting student-led, student-initiated prayer prior to football games, and the court struck down the policy, determining it violated the Establishment Clause. In the lower court in this same case, the judge ordered students not to pray in Jesus' name and told them that federal marshals would be on hand to take students to the Galveston County Jail, saying "Anyone who violates these orders, no kidding, is going to wish that he or she had died as a child when this court gets through with it."

- *Lee v. Weisman*, 505 U.S. 577 (1992).

  In Providence, Rhode Island, principals of public school were permitted to ask clergy to give invocations and benedictions at graduation exercises, but when a middle school principal invited a rabbi to give a nonsectarian prayer, a student's parent got a temporary restraining order to prevent the prayer and sought a permanent injunction to prevent the practice of inviting clergy to perform prayers in the future.

- *Wallace v. Jaffree*, 472 U.S. 38 (1985).

  A lawsuit was filed to challenge the practice of having a period of meditation and voluntary prayer in schools in Alabama.

- Frank J. Murray, *Federal Court Hears Lawsuit Over Kindergarten Christian; New York Schools May*

Relent, May Let Tot Say Grace at Meals, The Washington Times, April 12, 2002.

Kindergartner Kayla Broadus prayed, "God is good. God is great. Thank you, God, for my food," with two classmates at her school in Saratoga Springs, New York at the snack table before they ate their snack. Her teacher silenced the prayer, scolded Kayla and informed the school lawyer. A lawsuit ensued over the child's prayer.

- *From Aledo Independent School District, Aledo, Texas:*

  Katherine Furley was elected to pray at her graduation ceremony, but then was ordered to submit her prayer to officials. School officials then proceeded to edit, word by word, which words she could and could not pray. A lawsuit was filed to protect Katherine's right to pray without being edited by the government. The Court ruled against her right to pray without government editing.

- *From Norfolk High School, Nebraska:*

  After graduating seniors voted to have prayer in their graduation, a student complained to the ACLU, who threatened legal action against the school if they permitted the prayer. At the graduation ceremony, school officials announced that there would be no praying during the ceremony.

SCHOLARSHIP AWARDS AND VOUCHERS

- *Locke v. Davey,* ___ U.S. ___, 124 S. Ct. 1307 (2004).

  Josh Davey received a Promise Scholarship, which was awarded to academically gifted students with postsecondary education expenses, to use at any college in the state. He decided to pursue a double major in pastoral ministries and business management/administration.

Davey was told that he could use the scholarship for any major unless he was devoted to become a pastor. The Court ruled against him.

- *Eulitt v. Me. Dep't of Educ.,* 307 F. Supp. 2d 158 (D. Me. 2004).

  Though Maine state law requires free public education for kindergarten through 12th grade, the town of Minot only has schooling through the eighth grade, and the town has contracted to send their students elsewhere for high school, public school or other schools if the student has "educational program requirements that may not be offered in association with PRHS." A Minot family was denied access to public funding for child's tuition to Catholic high school, despite the fact that the state had the authority to approve payments to alternative schools, and a lawsuit was filed.

- *Zelman v. Simmons-Harris,* 536 U.S. 639 (2002).

  An Ohio voucher program was enacted because the public school system was in a "crisis of magnitude," and families were given voucher funds to use toward a school of their choosing. Many families elected to use their vouchers for religious schools, and as a result, a lawsuit was filed to challenge the program, claiming it established religion.

- *From Michigan:*

  A Cornerstone University graduate student received a tuition grant from the state of Michigan. But when the student decided to pursue a Pastoral Studies divinity degree, the financial aid office of the university informed him that he was no longer eligible for the grant because it could not be used for divinity, theology, or religious instruction. In other words, religious

studies were being treated differently than other areas of study.

SCHOOL FACULTY AND OTHER STATE EMPLOYEES

- *Barrow v. Greenville ISD,* 332 F.3d 844 (5th Cir. 2003).

  Karen Jo Barrow was denied an assistant principal position because she refused to remove her children from private, Christian school. A lawsuit was filed to protect her rights to select a religious education for her children without suffering repercussions for it at work in the public schools. Though the district court refused to uphold Barrow's parental rights to send her children to Christian school, the Fifth Circuit did and warded off this egregious religious discrimination on the part of the school district.

- *Fraternal Order of Police v. City of Newark,* 170 F.3d 359 (3d Cir. 1999).

  Two Muslim police officers in Newark were required to shave their beards after the city issued an order requiring all police officers to be clean shaven. The order permitted a medical exemption, but not a religious exemption. The officers had to file a lawsuit to protect their constitutional right to free exercise of their religion.

- *Nichol v. Arin Intermediate Unit 28,* 268 F. Supp. 2d 536 (W.D. Pa. 2003).

  The school district suspended an elementary school instructional assistant Brenda Nichol for wearing a cross necklace, finding her in violation of a district policy based on the Pennsylvania's Garb Statute, which prohibited teachers and other public school employees from wearing religious emblems or insignia.

A lawsuit was filed to remedy the policy, which was overtly and openly hostile to religion, and to prevent the district from forbidding symbolic speech by employees from a religious viewpoint.

- *Peloza v. Capistrano Unified Sch. Dist.,* 37 F.3d 517 (9th Cir. 1994).

  The Capistrano Unified School District forbade John Peloza, a biology teacher, from discussing religious matters with students the entire time he is on the school campus, even if the discussion occurs outside of class time and is student-initiated. Essentially the district had a history of reprimanding and harassing Peloza because of his worldview. Peloza filed suit to protect his constitutionally-protected free speech and equal protection rights, but the court dismissed Peloza's complaint finding that the school district's interest in avoiding an (unlikely) Establishment Clause violation trumped Peloza's rights.

- *Roberts v. Madigan,* 921 F.2d 1047 (10th Cir. 1990).

  Mr. Roberts' class had a silent reading period daily, and Mr. Roberts had a library of 239 books, from which the students could select reading material. Two of the books dealt with Christianity. Mr. Roberts participated in the reading period, often choosing to read his Bible, and he kept the Bible on his desk during the school day. The school principal censored Mr. Roberts, forbade him from placing his Bible on his desk during the school day and from reading it during the school day, and forbade him from keeping the two Christian books in the library. A lawsuit was filed to end the religious bigotry against Mr. Roberts, but the court upheld the school's action and even awarded the school district court costs.

- Diane Lynne, *Petition Posted to Defend 'God Bless America,'* WorldNetDaily, Jan. 31, 2003.

  Military honor guardsman Patrick Cubbage was fired for saying "God bless you and this family, and God bless the United States of America" to families as he presented a folded flag in honor of a fallen veteran. Though the families did not object to the practice, Cubbage's co-guardsmen complained to their supervisor, and Cubbage was warned not to say the blessing to the families. Later Cubbage gave the blessing to family after a request from the fallen veteran's son, and shortly thereafter Cubbage was fired for giving the blessing.

- Jeremy Gray, *Man Fired Over Lapel Pin Garners Support,* The Birmingham News, June 27, 2004, News.

  The Hoover Chamber of Commerce fired employee Christopher Word because he wore a Ten Commandments lapel pin.

- Bill McAllister, *Gearing Up for Christmas,* Washington Post, Sept. 29, 1995, at N66. The Post Office issued guidelines advising clerks to use words like "Happy Holidays" and to avoid any decorations with a religious theme.

- *From Logan, Kentucky:*

  A public library policy prevented employees from wearing religiously-oriented jewelry, and an employee was fired for wearing a cross. A lawsuit was filed to protect the employee's right to free speech and religious freedom.

- *From Honolulu, Hawaii:*

  Honolulu city employee Kelly Jenkins was prohibited from posting religious literature, like an invitation to his church, in common areas of the employee break

room and employee bulletin boards because of "separation of church and state" concerns. A lawsuit had to be filed to protect Jenkins' rights.

REGULAR CITIZENS

- Jeffrey Spino, *Banned Yarmulke Leads to Judicial Conduct Commission Complaint,* Texas Lawyer, Sept. 30, 1996, at 5.

  Judge Patricia Lykos ordered a Jewish attorney Gil Fried to remove his yarmulke in Texas Court when he was serving as an expert witness.

- *From Vermont:*

  Nancy Zins attempted to purchase specialty plates in Vermont for herself and for her husband with the messages "ROMANS8" and "ROMANS5" on the plates, but her request was denied by the Vermont DMV, which claimed that the messages may be offensive. After first going through the Agency of Transportation, a lawsuit was filed to protect her free speech rights and her ability to select a message for her license plate just as other non-religious citizens are free to do.

- *From Northglenn, Colorado:*

  A coach shared his faith as he coached swimming in the city recreation facility. The city recreations director sent the coach a letter, informing him that he was no longer welcome on the premises of the city recreation facility. A concerned parent inquired to the city to find out why the coach had been banned and was told that the coached used offensive language. Upon further investigation, the parent discovered that the coach's preaching was the problem. A lawsuit was

filed to protect he [sic] man's rights to access the city recreation facility.

IN THE SCHOOLHOUSE

- *Fleming v. Jefferson County Sch. Dist. R-1,* 298 F.3d 918 (10th Cir. 2002).

  Columbine High School hosted a tile-painting project, so students could express themselves following the school's tragedy. Some students expressed themselves with religious symbols, including a victim's sister who incorporated a small yellow cross in her tile design. After the tiles were posted, the school officials eradicated the religious symbols from the tile display, so a lawsuit was filed to prevent the school officials from censoring the religious expression of the students. Unfortunately, the court chose not to uphold the students' expression rights and instead validated the school's censorship.

- *Demmon v. Loudoun County Pub. Sch.,* 279 F. Supp. 2d 689 (E.D. Va. 2003).

  For a school fundraiser, people could purchase bricks and have text and symbols inscribed on the bricks to be used in a sidewalk surrounding the school's flagpole, and some purchasers elected to have a Latin cross inscribed. A parent complained about the crosses, so the school district removed all the crosses. A lawsuit was filed to protect the religious expression from censorship.

- *Selman v. Cobb County Sch. Dist.,* 2004 US Dist. LEXIS 5960 (N.D. Ga. 2004).

  A Georgia School District decided to place a sticker in new science textbooks explaining that evolution was a theory, not a fact, and encouraging students to study

with open minds and critical thinking skills. But a handful of parents complained that the sticker restricted teaching evolution and promoted creationism and filed a lawsuit to prevent its use, under the guise that such a sticker violated the Establishment Clause.

- *Good News Club v. Milford Central School,* 533 U.S. 98 (2001).

  The Milford Central School denied the Good News Club use of the school's facilities after school. A lawsuit was filed to protect the religious group's right to use the school's facilities just like other organizations could, without being discriminated against because it is a religious group. The case had to go all the way to the Supreme Court before the religious group was vindicated because the lower courts both upheld the school's unlawful religious discrimination.

- *Widmar v. Vincent,* 454 U.S. 263 (1981).

  The University of Missouri at Kansas City refused to allow a religious student group access to university facilities as other student groups were permitted to do. The students were forced to file a lawsuit in order to protect their rights to equal access. They simply desired for their religious organization to be afforded the same rights as other student organization [sic].

- *Wigg v. Sioux Falls Sch. Dist.,* 274 F. Supp. 2d 1084 (D.S.D. 2003)

  A school district refused to allow a teacher to participate in a Good News Club meeting at the school after school hours, so the teacher filed suit to protect her rights to assemble with the religious group. The court only partially protected her rights, ruling that she could attend Good News Club meetings, but arbitrarily determined that she only had the protected right

to participate in meetings at schools other than where she taught.

- *Bd. of Educ. v. Mergens,* 496 U.S. 226 (1990).

  The school board refused to allow students to form an extra-curricular Christian club, claiming such a club would violate the Establishment Clause, despite the fact that various other clubs met at the school. A lawsuit was filed to protect a Christian group from being unlawfully discriminated against by a school board.

- *Ceniceros v. Bd. of Trs. of the San Diego Unified Sch. Dist,* 106 F.3d 878 (9th Cir. 1997).

  The school district refused a religious club the opportunity to meet during non-instructional lunchtime, though other groups could. A lawsuit was filed on behalf of the students to prevent the district's unlawful discrimination and to uphold the students' rights under the Equal Access Act. The case went to the Ninth Circuit before the students were finally afforded their constitutional protection.

- *Edwards v. Aguillard,* 482 U.S. 578 (1987).

  A suit was filed to challenge Louisiana's Creationism Act. The Creationism Act provided that if evolution is taught in public schools, creation science must also be taught. And if creation science is taught, then evolution must be taught as well. The suit sought to strike down the act under the guise that it violated the Establishment Clause, and the Supreme Court obliged, striking down the Creationism Act.

- *Bauchman v. West High Sch.,* 132 F.3d 542 (10th Cir. 1997).

  A school choir's repertoire included Christian music and occasionally sang at a church, and a Jewish choir student's family filed a lawsuit, essentially asking the

court to censor the choir from singing any religious music. The case reached the Tenth Circuit before the unlawful religious censorship threat was abated.

- *Rosenberger v. Rector & Visitors of Univ. of Va.,* 515 U.S. 819 (1995).

  The University of Virginia denied a student journal funding from the school's student activity fund because of the journal's religious viewpoint. The student filed a lawsuit to challenge the guidelines for disbursement of student activity funding because the guidelines were used to discriminate religious viewpoints. The student filed a lawsuit and had to go all the way to the Supreme Court just to have their constitutionally-guaranteed rights upheld.

- *Chandler v. James,* 985 F. Supp. 1068 (D. Ala. 1997).

  Plaintiffs ("civil liberties activists") filed a lawsuit and succeeded in permanently enjoining school board and public officials from accommodating religious activity in schools. The court determined that the school officials' behavior had violated the Establishment Clause because they permitted prayer at school functions, excused students from school for baccalaureate services, and permitted religious study with non-school persons during school hours.

- *Child Evangelism Fellowship v. Montgomery County Pub. Schs.,* 2004 U.S. App. LEXIS 13487 (4th Cir. 2004).

  The Montgomery County Schools refused to allow the Child Evangelism Fellowship (CEF) to participate in the district's take-home flyer forum to distribute flyers about the Good News Club, citing fears about the separation of church and state. A lawsuit was filed to protect the rights of CEF to participate in the flier program just as other organizations were permitted to

do and to force the school district to cease the religious discrimination.

- *Child Evangelism Fellowship of New Jersey v. Stafford Township,* 233 F. Supp. 2d 647 D.N.J. 2002).

  A religious organization was denied permission to post fliers, pass fliers out, staff tables at back-to-school-night or allow students to pass materials to other students about a religious club forming in schools. A lawsuit was filed to protect the right of a religiously-affiliated organization to utilize the same forums that were afforded to other groups and to prevent the school board from discriminating based on a religious viewpoint.

- *Daugherty v. Vanguard Charter Sch. Acad.,* 116 F. Supp. 2d 897 (W.D. Mich. 2000).

  Parents of children attending the Vanguard Charter School Academy claimed that the school violated the Establishment Clause because a mom's prayer group met in the parent room, teachers and staff prayed (on their own accord) on school property, religious materials were distributed in student's folders (a content neutral forum), and the school taught morality. These parents filed a lawsuit to prevent the school from permitting the religious activity at the school.

- *Doe v. Duncanville Indep. Sch. Dist.*, 70 F.3d 402 (5th Cir. 1995).

  A student and her father filed a lawsuit because the school permitted employees to be involved with student prayer after basketball games, permitted the choir to use a Christian song as its "theme song" and permitted the distribution of Gideon Bibles to fifth grade classes. The court upheld the right of the choir to sing the religious song but struck down the employees'

involvement with prayer, determining that such an exercise violated the Establishment Clause.

- *Mitchell v. Helms,* 530 U.S. 793 (2000).

  Under the Education Consolidation and Improvement Act of 1981, government aid for materials and equipment was provided to public as well as private schools. A lawsuit was filed by parties claiming the law violated the Establishment Clause simply because private schools, including religious schools, received a benefit from the act, which the parties claimed served as an establishment of religion.

- *Peck v. Upshur County Bd. of Educ.,* 155 F.3d 274 (4th Cir. 1998).

  A school board policy permitted religious groups to provide religious materials and Bibles to students on one designated day each school year, but a lawsuit was filed to strike down the policy.

- *Powell v. Bunn,* 185 Ore. App. 334 (Or. Ct. App. 2002)

  An Oregon school district allowed the Boy Scouts to present information on membership to students, but a parent filed suit, challenging the policy on the grounds that it violated the Establishment Clause.

- *Rusk v. Crestview Local Schs.,* 220 F. Supp. 2d 854 (N.D. Ohio 2002).

  School permitted non-profits, including religious non-profits, to submit flyers to the school for distribution to the students' mailboxes, and a parent filed a lawsuit, objecting to the religious groups being able to submit flyers, even though the flyers did not advocate the religion and were not proselytizing. The court halfheartedly upheld the religious groups' rights to utilize the mailbox distribution, but the court only permitted the groups to distribute certain messages

and censored information relating to a religious or sectarian event.

- *Skoros v. City of New York,* 2004 U.S. Dist. LEXIS 2234 (E.D.N.Y. 2004).

  A Catholic parent objected to policy of excluding a Creche from New York City Schools' holiday displays while permitting Menorahs, the Star and Crescent and Christmas Trees. A lawsuit was filed to remedy the exclusion of the Creche. The court determined that it was appropriate to exclude the Creche as it was still a religious symbol while the others had become secularized and that a child would not perceive an endorsement of the Judaism or Islam or disapproval of Christianity.

- *Washegesic v. Bloomingdale Public Schs.,* 33 F.3d 679 (6th Cir. 1994).

  A portrait of Jesus Christ hung in a hallway of a school, and a former student filed suit against the school, asserting that the portrait was an Establishment Clause violation, and the court agreed and decided that the picture must be removed.

- Lisa Falkenberg, *Policy Involving Evolution Prompts Federal Inquiry,* Associated Press, Jan. 29, 2003, BC cycle.

  The story details how Texas Tech professor Michael Dini discriminated against students on the basis of their religion, and the university stood behind the professor saying the professor's policies were not in conflict with those of Texas Tech.

- Ryan McCarthy, *School Rallies to Retain Sigh* [sic]*; The ACLU Says the Message 'God Bless America' Divides Kids by Religion and is Unconstitutional,* The Sacramento Bee, Oct. 6, 2001.

  In the wake of Sept. 11, 2001, Breen Elementary School in Rocklin, California had a sign posted that said 'God Bless America,' and the ACLU intervened in an attempt to have the sign removed, calling it a clear violation of the U.S. and California constitutions and divisive.

- Barbara Vobejda, *School Officials' Weigh Sachs' Ruling on Religious Gatherings,* Washington Post, Dec. 8, 1984, B3.

  Maryland Attorney General Stephen H. Sachs ruled that Catonsville High School students could continue their informal religious activity of gathering to read the Bible during their Thursday lunch hours. School administrators were worried about the ruling because they feared it would create problems in a "sensitive area." Additionally, in Prince George's County school administrators renamed Christmas trees and Christmas pageant, holiday trees and holiday pageant respectively.

- *From Oswego County, New York:*

  The Mexico Academy High School decided to start removing bricks that had been purchased and inscribed as part of a school fundraiser if the brick contained a Christian message. A lawsuit had to be filed to protect the free speech and equal protection rights of citizens who had purchased the bricks and to prevent the religious censorship.

- *From Crosby-Ironton High School in Crosby, Minnesota:*

  The Crosby-Ironton High School censored the Lunch Bunch, a Christian group, from using flier to describe their group and to promote the See You at the Pole event. A lawsuit was filed to protect the students' rights, the same rights afforded to other student organizations.

- *From Los Angeles Unified School District:*

  The Los Angeles Unified School District tried to force a "Good News Club" to pay fees to utilize school facilities, but did not require fees from the Boy Scouts or the YMCA. A law suit was filed, seeking to grant religious groups equal access to school facilities.

- *From Montgomery County Public Schools, Maryland:*

  A school policy prevented students from receiving credit for their religious community service to fulfill the 60-hour community service graduation requirement. Students who worked at a Vacation Bible School on an Indian Reservation were not permitted to count that time toward their hourly requirement. Attorneys intervened and the students were permitted to count the hours, but, unfortunately, the policy remains and continues to discriminate against students who participate in religiously-based community service.

- *From Dillon, Montana:*

  Motivational speaker Jaroy Carpenter was prevented from speaking at an assembly in the Dillon Middle School because he was an evangelical Christian and affiliated with the Dawson McAllister Association. He was prevented from speaking despite the fact that he had previously spoken in over 200 secular schools, and he agreed to omit discussions of his religious faith and references to a youth rally being held nearby. A lawsuit was filed to protect Carpenter's rights.

- *From Carl Sandburg Community College, Indiana:*

  Cosmetology teacher Louise Piggee was reprimanded severely and denied a contract renewal after she shared some religious literature outside of the classroom with

  a student with whom she had developed a relationship. A lawsuit was filed.

- *From Reno, Nevada:*

  School officials sought to prevent a Bible club from disturbing candy canes with the message "Jesus Loves You" attached to it.

- *From Northville High School in Michigan:*

  A Bible club was told it would have to meet before or after school and not during seminar period as other groups are permitted to do because of the religious nature of the group. Bible club members filed suit to protect their right to meet without being discriminated against because their groups was [sic] religious.

- *From Panama City, Florida:*

  A school principal changed the name of the Bible Club from Fellowship of Christian Students to Fellowship of Concerned Students without conferring with student members.

- *From Beaumont Independent School District, Texas:*

  The superintendent started a "clergy-in-schools" program, which allowed clergy to mentor students, but the Americans United for Separation of Church and State filed suit seeking to strike down the program.

- *From South Tama Community School District, Iowa:*

  The community center denied the Fellowship of Christian Athletes (FCA) access to facilities, so an FCA member complained and a demand letter was sent to the school district, informing them of the situation. Only then, did the school district back down and change their policy to stop discriminating against religiously affiliated groups.

- John M. Hartenstein, *A Christmas Issue: Christmas Holiday Celebration in the Public Elementary Schools Is an Establishment of Religion*, 80 Calif. L. Rev. 981 (1992).

RELIGIOUS HOLIDAY OBSERVATION

- *Metzl v. Leininger,* 57 F.3d 618 (7th Cir. 1995).

  A teacher filed suit in objection to teachers being permitted to take Good Friday off with pay, claiming the practice violated the Establishment Clause.

- *Bridenbaugh v. O'Bannon,* 185 F.3d 796 (7th Cir. 1999).

  A citizen filed suit to challenge the Indiana policy of giving state employees Good Friday as a day off with pay, claiming that the policy established religion.

- *Freedom From Religion Foundation v. Thompson,* 920 F. Supp. 969 (W.D. Wis. 1996) (mem.).

  Anti-religion group filed suit to challenge a Wisconsin statute that recognized Good Friday as a holiday, claiming that designating Good Friday as a holiday violates the Establishment Clause. The court agreed, finding that the Establishment Clause was violated.

- *From Garden City Long Island, New York:*

  Teachers in Garden City Long Island wanted to use personal days to observe religious holidays, which is one of listed permissible uses for a personal day, but when some Catholic teachers requested to use a personal day for Holy Thursday and some Jewish teachers wanted to use a personal day during Passover, they were denied and were forced to go to arbitration to prevent the religious discrimination.

EQUAL ACCESS, CHURCH AND RELIGIOUS GROUP DISCRIMINATION

- *Bronx Household of Faith v. Bd. of Educ.,* 331 F.3d 342 (2003).

  The Bronx Household of Faith filed suit to prevent the New York public schools from discriminating against churches. The public schools refused to allow churches to use school facilities, but permitted other community groups to have access. The church brought suit so it could be treated just like any other community group wanting to use the facility.

- *Church of the Lukumi Babalu Aye, Inc v. City of Hialeah,* 508 U.S. 520 (1993).

  The Church of the Lukumi Babalu Aye sought to set up a church in Florida; the church practices Santeria, a religion which incorporates animal sacrifice into its religious practices. Upon hearing of the church's plan to develop a church in the city, the city counsel held an emergency meeting and passed ordinances which would prevent the church from practicing the animal sacrifice, an essential part of the church's free exercise. A lawsuit was filed to protect the church's right to free exercise.

- *Lamb's Chapel v. Ctr. Moriches Union Free Sch. Dist.,* 508 U.S. 384 (1993).

  A New York school board denied a church after-hours access to a school to exhibit a film series about Christian family values because of a policy prohibiting use by any group for religious purposes. A lawsuit was filed to protect the church's right to have access to the school premises. The church should not be treated like a second-class citizen because it is religious.

- *Liberty Christian Center v. Bd. of Educ.,* 8 F. Supp. 2d 176 (N.D.N.Y 1998).

  A suit was filed after the Board of Education of Watertown, New York denied the Liberty Christian Center (LCC) access to the Watertown High School Cafeteria during non-school hours. A lawsuit was filed to prevent the Board from discriminating against a religious group and denying its rights to equal access.

- *Amandola v. Town of Babylon,* 251 F.3d 339 (2d Cir. 2001).

  Pastor John Amandola's church Roman Chapter Ten Ministries, Inc. had obtained a permit to use the Babylon's Town Hall Annex to hold worship services, but when an angry resident called the city to complain about the facilities being used for church services, the town revoked the permit. The church filed suit to protect their right to access the community facilities and to end the religious bigotry.

- *Church on the Rock v. City of Albuquerque,* 84 F.3d. 1273 (10th Cir. 1996).

  City prevented senior citizens groups from presenting a Jesus video, giving Bibles away or having sectarian instruction and religious worship at the senior center. So, a lawsuit was filed to challenge the city's policy, which was unconstitutionally restricting religious expression.

- *Ehlers-Renzi v. Connelly Sch. of the Holy Child,* 224 F.3d 283 (4h Cir. 2000).

  An ordinance in Montgomery County, Maryland accommodated churches by exempting them from acquiring a special permit before constructing a school on church property, but a lawsuit was filed in an attempt to strike down the law.

- *Ford v. Manuel,* 629 F. Supp. 771 (N.D. Ohio 1985).

  The Findlay Board of Education permitted the Findlay Weekday Religious Education Council to operate before and after school hours in the public schools in accordance with "Community Use of School Facilities," but parent-taxpayers complained about the program because of concerns regarding the Establishment Clause and filed a lawsuit in hopes of striking down the program.

- *Moore v. City of Van,* 238 F. Supp. 2d 837 (E.D. Tex. 2003) (mem.).

  The City of Van had an unwritten policy of refusing to permit a group to access the Van Community Center if the use was for a religious purpose, so citizens seeking to use the center for religious purposes filed suit to protect their rights and to prevent the city from having policies that discriminate against religious groups.

- *From New York City:*

  A New York City pastor wanted to use the Woodside Community Center, located in a public housing development, to host a Bible study for New Yorkers following the attacks on September 11, 2001. The pastor was denied his request because religious services (unless connected to a family oriented event like a wedding) were prohibited. A lawsuit was filed to prevent the community center from treating religious groups differently than other groups.

- *From the Church of Christ in Hollywood, California:*

  Former church member Lady Cage-Barile began to intimidate and harass members of the church and interrupt and disrupt Bible studies, so the church informed her she was no longer welcome on church property. When the church sought an order barring

Cage-Barile, the court denied it, and the church was forced to go to the California Court of Appeals to enforce its right to exclude trespassers from church premises.

- *From Mitchell County, Texas:*

  The public library in Mitchell County, Texas tried to deny Rev. Seneca Lee access to a room to hold a meeting about political and social issues from a Christian Perspective because of a library policy that prevented religious groups from using the meeting room. After a lawsuit was filed, the library changed their policy of discriminating against religious groups.

- *From Plano, Texas:*

  The city of Plano attempted to prevent the Willow Creek Fellowship from opening because of the slant of the roof, despite the fact that no ordinance existed relating to the angle of the room and despite the fact that a school just down the street from the church had an identical angle. Only after threat of a lawsuit did the city relent and permit the church to open.

- *From Cassadaga, Florida:*

  A church was refused zoning approval for a church after they had purchased land outside of Cassadaga, which was a violation of Religious Land Use and Institutionalized Persons Act (RLUIPA). A lawsuit was filed in Federal Court, and the county settled, ending the lawsuit and permitting the church to locate in Cassadaga.

- *From the Dallas Independent School District in Texas:*

  Reunion Church had leased an empty high school on Sunday morning for services, but the school district evicted the church in the middle of the lease, citing the "separation of church and state." A lawsuit was

filed to protect the church's equal access, and the school district changed their policy to grant religious groups the same treatment as non-religious organizations.

- *From the Cave Creek School District, Arizona:*

  The Cave Creek public school district passed a policy allowing non-profit community groups to meet in public schools without charge, but the policy excluded churches. A church was charged $1,200 under the policy to access the school. An attorney got involved to explain the constitutional issues associated with the policy and to request records under the Freedom of Information Act to determine how much the school had charged other groups during the previous three years. As a result of the intervention, the school district decided to revise the discriminatory policy and also decided to reimburse the church for their moneys.

- *From Lebanon, Indiana:*

  A minister and a church member from Grace Baptist Church were prohibited form distributing religious literature in a public park, though the minister had distributed materials for years in the park. A lawsuit was filed to protect the minister's rights.

- *From Ontario, California:*

  The Church of the Light bought some land in Ontario after determining that the property was zoned so that it could contain religious assembly. However, the city passed an ordinance requiring new churches to obtain a permit before building, and five days after the ordinance was passed, Ontario's Development Advisory Board denied the church's permit applications, claiming the denial was because if [sic] allegations that the

church was a cult. A lawsuit was filed to protect the church's rights to build their church.

- *From Balch Springs, Texas (Barton v. City of Balch Springs):*

  Senior citizens were told to stop their 20-year-old practices of praying before their meals, having an inspirational religious message, and singing gospel songs in their Senior Citizens Center because of a new city policy banning religion in public buildings. A lawsuit was filed to defend the seniors' rights.

- *From Dunedin Public Library in Tampa, Florida:*

  The Liberty Counsel was denied access to the library's community meeting room for a meeting relating to America's Christian History and the influence of the Ten Commandments, a historical presentation from a religious perspective, which was open religious viewpoint discrimination.

- *From San Fernando Valley, California:*

  The Child Evangelism Fellowship (CEF) applied to the Los Angeles Unified School District to use the Chase Street Elementary School in Panorama City to host a Good News Club. The school policy permitted use by civic and community groups, but prevented use by "sectarian of denominational religious exercises or activities." So, the CEF applied through the Real Estate branch and was willing to pay application and rental fees, which is not required of all other groups, but CEF was still denied. A lawsuit was filed to gain equal access for the religious group and to prevent the school district's religious discrimination.

HOLIDAY DISPLAYS

- *ACLU of NJ v. Township of Wall,* 246 F.3d 258 (3d Cir. 2001).

  The ACLU, along with some citizens, filed a lawsuit to challenge a holiday display consisting of a crèche with traditional figures, a lighted tree, urns, candy cane banners, a menorah, and signs commenting on celebrating diversity and freedom as well as wishing passer-bys Merry Christmas and Happy Hanukkah.

- *Amancio v. Town of Somerset,* 28 F. Supp. 2d 677 (D. Mass. 1998).

  Somerset resident filed a lawsuit challenging Somerset's Christmas display, which includes a Nativity crèche, holiday lights, a wreath, a Christmas tree and a plastic Santa Claus. The display had been a Somerset tradition for 60 years.

- *Lynch v. Donnelly,* 465 U.S. 668 (1984).

  Pawtucket, Rhode Island has an annual Christmas display in the city's shopping district, which is owned by a nonprofit, and it includes a Santa house, Christmas tree, a "Seasons Greetings" banner, and a crèche, which had been a staple of the display for over 40 years. A lawsuit challenged the display and specifically the inclusion of the crèche.

- *ACLU v. City of Birmingham,* 791 F.2d 1561 (6th Cir. 1986).

  The ACLU filed suit to expel a crèche from the annual holiday display at city hall, claiming it violated the Establishment Clause.

- *ACLU of New Jersey v. Schundler,* 168 F.3d 92 (3d Cir. 1999).

  The ACLU filed suit to challenge a holiday display, which included a crèche and a menorah, claiming the display violated the Establishment Clause.

- *ACLU of Kentucky v. Wilkinson,* 701 F. Supp. 1296 (E.D. Ky. 1988).

  The ACLU filed suit to challenge a nativity scene on the Kentucky Capitol, seeking an injunction preventing the continued use of the nativity scene, claiming the nativity scene was an endorsement of religion.

- *ACLU v. City of Florissant,* 186 F.3d 1095 (8th Cir. 1999).

  The ACLU filed suit to challenge a holiday display at the city Civic Center in Florissant, Missouri on behalf of a resident who was offended by the inclusion of the crèche in the holiday display.

- *ACLU of New Jersey v. Schundler,* 104 F.3d 1435 (3d Cir. 1997).

  The ACLU along with some citizens filed suit challenging a holiday display containing a crèche and a menorah on city hall property.

- *Americans United for Separation of Church and State v. City of Grand Rapids,* 1992 U.S. App. LEXIS 7513 (6th Cir. 1992).

  Americans United filed suit to prevent a menorah from being placed on Calder Plaza in Grand Rapids during the Chanukah celebration, claiming the placement of the menorah established religion. The court struck down the display, determining that the city appeared to be endorsing religion because of the display.

- *Calvary Chapel Church, Inc. v. Broward County,* 299 F. Supp. 2d 1295 (S.D. Fla. 2003).

  Broward County, Florida hosts the Holiday Fantasy of Lights in a public park as a city fundraiser. A church wanted to contribute to the event and have a display that included the words, "Jesus is the Reason for the Season," but the city refused to allow it. The church filed a lawsuit in order to protect their constitutional rights to participate in the city event without having their message being censored because it was religious.

- *Capitol Square Review & Advisory Bd. v. Pinette,* 515 U.S. 753 (1995).

  The board responsible for regulating the Ohio State Capitol Square refused a permit to a group wanting to display a cross during the 1993 Christmas season, so a lawsuit was filed.

- *Comty. for Creative Non-Violence v. Lujan,* 908 F.2d 992 (D.C. Cir. 1990).

  The Park Service has hosted a "Christmas Pageant of Peace" on White House grounds since 1954 and includes the pageant included the National Christmas Tree, a Nativity Scene, and live reindeer. The Park Service declined to includ a sculpture from the Community for Creative Non-Violence, and the Community filed suit.

- *County of Allegheny v. ACLU,* 492 U.S. 573 (1989).

  The ACLU challenged a holiday display, and the Supreme Court held that a menorah in front of the City-County Building for a seasonal display did not violate the Establishment Clause, though a crèche in the county courthouse did.

- *Doe v. Small,* 934 F.2d 743 (7th Cir. 1991).

  Citizen filed a lawsuit to challenge a city annual yuletide display, which included 16 large paintings showcasing events in the life of Jesus Christ in hopes of eradicating the religious expression from the public square and striking down the yuletide display. The court struck down the long-standing tradition of including the 16 pictures of Jesus, finding that such a display endorsed religion and as such violated the Establishment Clause.

- *Doe v. City of Westland,* 1987 U.S. Dist. LEXIS 15321 (E.D. Mich. 1987).

  Doe, supported by the ACLU, brought a lawsuit to challenge a Christmas display in the Westland central city complex because it included a nativity scene.

- *Kaplan v. City of Burlington,* 891 F.2d 1024 (2d Cir. 1989).

  Lawsuit challenged a menorah display during December, and the court struck down the display of the menorah on the grounds that such religious expression offended the Establishment Clause.

- *King v. Village of Waunakee,* 517 N.W.2d 671 (Wis. 1994).

  Citizens filed a lawsuit challenging a crèche display during the Christmas season, seeking to eradicate the religious symbol from public square.

- *Mather v. Village of Mundelein,* 864 F.2d 1291 (7th Cir. 1989).

  Plaintiff Rachel Mather challenged the holiday display in front of Village Hall in Mundelein, alleging that the display included a crèche and gave her a sense of inferiority because she's Jewish.

- *Soc'y of Separationists, Inc. v. Clements,* 677 F. Supp. 509 (W.D. Tex. 1988).

  The Society of Separationists filed a lawsuit challenging the "Christmas Carol Program," which is an annual event in the Texas Capitol when a Christmas tree is presented to Texas, politicians make speeches, the Texas Public Employees Association presents money to charity, Santa visits, singers perform Handel's Messiah and two religious carols are performed. The Separationists asserted that the program violates the Establishment Clause and sought a preliminary injunction to prevent the program from occurring.

- Terry Mattingly, *On Religion: Things Got Rough on Church-State Front This Holiday Season,* Naples Daily News, Jan. 17, 2004.

  The article chronicles the Christmas Season and the drama relating to public displays of celebration, including a story on firefighters in Glenview, Illinois who removed Christmas lights after neighbors complained of being offended. In addition, a pastor in Chandler, Ariz. complained that the public library display excluded Christmas and only included Hanukkah and Kwanzaa. The library took down the entire display, rather than augment the display with some information about Christmas. And in Tallahassee, Florida, a controversy erupted when a Jewish Chabad offered to help purchase a menorah for the courthouse yard and the ACLU threatened suit.

CITY SEALS, MOTTO, SCULPTURES, AND THE PLEDGE

- *ACLU v. Capitol Square Review and Advisory Bd.,* 243 F.3d 289 (6th Cir. 2001).

  The ACLU filed a lawsuit challenging Ohio's motto, "With God, All Things Are Possible."

- *Gaylor v. U.S.,* 74 F.3d 214 (10th Cir. 1996).

  The Freedom from Religion Foundation along with some citizens challenged the use of the national motto on the U.S. currency in federal court.

- *ACLU v. City of Stow,* 29 F. Supp. 2d 845 (N.D. Ohio 1998).

  The ACLU challenged the placement of a cross on Stow's city seal, claiming that the use of such a symbol served as an establishment of religion. Unfortunately, the ACLU prevailed in the lawsuit because the court found that a reasonable observer would perceive the cross on the seal as an establishment of religion with the effect of advancing or promoting Christianity, and the city was forced to remove the cross.

- *Harris v. City of Zion,* 927 F.2d 1401 (7th Cir. 1991).

  The Society of Separationists and some other citizen plaintiffs challenged the use of religious symbols on city seals in Rolling Meadows and Zion, Ill. The Rolling Meadows seal contained a Latin cross and was adopted in 1960 and the Zion's seal contained a Latin cross, a dove carrying a branch and was adopted in 1902. The court struck permanently enjoined the cities from using the long-standing seals, considering the use of the religious symbols to violate the Establishment Clause. The decision effectively eradicated both cities' religious history and influence from the city seals.

- *King v. Richmond County,* 331 F.3d 1271 (11th Cir. 2003).

  A small group of citizens filed suit and claimed that the 130-year-old seal of the Superior Court of Richmond County violated the Establishment Clause and was unconstitutional because the image included a portrayal of the Ten Commandments tablets.

- *Robinson v. City of Edmond,* 68 F.3d 1226 (10th 1995).

  Plaintiffs filed suit to challenge the use of a Latin or Christian cross on the Edmond's city seal, which was adopted in 1965 through a competition through the City Counsel and the local newspapers. The cross reflected the historical importance of the Catholic Church in the development of the southwest, but the court held that the seal established religion and struck down the use of the cross, eradicating the historical significance of religion from the seal.

- *Lambeth v. Bd of Comm'rs,* 2004 U.S. Dist. LEXIS 11195 (M.D.N.C. 2004).

  A pair of attorneys filed suit claiming that a display of the national motto on the Davidson County Governmental Center violates the Establishment Clause.

- *Alvarado v. City of San Jose,* 94 F.3d 1223 (9th Cir. 1996).

  The City of San Jose installed and maintained a sculpture ("Plumed Serpent" – of Aztec mythology) to commemorate the Mexican and Spanish contributions to the city's culture. When people began to bring flowers and burn incense at the sculpture, citizens filed suit claiming the sculpture violated the Establishment Clause, but the court upheld that sculpture.

- *Mendelson v. City of St. Cloud,* 719 F. Supp. 1065 (M.D. Fla. 1989).

  A citizen sued the city claiming an illuminated Latin cross on a city water tower violated the Establishment Clause, and the court determined that the cross violated the Establishment Clause and enjoined the city from keeping the cross on the water tower, expunging the religious expression from the public square.

- *Murray v. City of Austin,* 947 F.2d 147 (5th Cir. 1991).

  The Society of Separationists brought suit challenging city insignia of Austin because it included a cross, but the court upheld the city's insignia against the censorship attempt.

- *Myers v. Loudoun County Sch. Bd.,* 251 F. Supp. 2d 1262 (E.D. Va. 2003) (mem.).

  A lawsuit was filed challenging the constitutionality of two Virginia statutes, one that required students in public schools to say the pledge of allegiance and the other required the national motto to be posted at Virginia schools.

Newdow v. U.S. Congress, 328 F.3d 466 (9th Cir. 2002).

Atheist Michael Newdow filed suit to remove the words "under God" from the Pledge of Allegiance. Newdow's daughter attends public elementary school where students recite the Pledge as part of the morning activities. Newdow filed suit claiming that his daughter is injured because she is compelled to witness her teacher lead her classmates in a ritual where they are proclaiming that there is a God and that our nation is under God.

- *Paulson v. City of San Diego,* 294 F.3d 1124 (9th Cir. 2002).

  A citizen challenged the constitutionality of a cross erected in Mt. Soledad Natural Park, which is owned by San Diego, and the court found that the city violated the California Constitution by keeping the cross and forbade the city from maintaining the cross.

- Hugo Martin, *Facing ACLU Complaint, City to Drop Seal's Cross,* L.A. Times, April 29, 2004, at B1.

  The ACLU threatened a lawsuit against the city of Redlands if the city did not remove a cross from the city's seal. The city removed the cross rather fight a legal battle against the ACLU, despite many protests from citizens wanting the seal to retain the cross.

- Sue Fox, *Facing Suit, County to Remove Seal's Cross,* L.A. Times, June 2, 2004, at B1.

  The ACLU threatened a lawsuit if the Los Angeles County did not remove a cross from the county's seal, and the county succumbed to the ACLU's pressure and decided to remove the cross. The cross had adorned the seal since 1957 along with a cow, tuna fish, Spanish galleon, the Hollywood Bowl, and the Goddess Pomono. The region was sealed by Catholic missionaries and the cross memorialized that historical fact.

- *From Springfield, Missouri*

  The ACLU filed a lawsuit challenging the use of an ichthus (i.e. a Christian fish symbol) on the city of Republic's seal, and a federal judge ordered the city to remove the symbol.

- *ACLU Finds Gold at the Foot of the Cross,* Chattanooga Times Free Press, June 24, 2004, B7 (editorial).

  The editori l outlines the amount of money the ACLU receives in attorneys' fees from challenging Ten Commandments displays, religious symbols on city seals, and the Pledge of Allegiance. When a city loses one of these battles in court, the city must pay the ACLU, into the tens of thousands to the hundreds of thousands of dollars.

- John E. Thompson, *What's the Big Deal? The Unconstitutionality of God in the Pledge of Allegiance,* 38 Harv. C.R.-C.L. L. Rev. 563 (2003).

TEN COMMANDMENTS

- *Harvey v. Cobb County,* 811 F. Supp. 669 (ND. Ga. 1993), aff'd per curiam, 15 F. 3d 1097 (11th Cir. 1994).

  Plaintiffs filed suit challenging a framed panel of Ten Commandments and the Great Commandment displayed at the county courthouse. The court concluded that the displays were unconstitutional, but the court allowed a stay so that the county could incorporate non-religious, historical items, which according to the court would transform the display to fit within constitutional guidelines.

- *Ind. Civ. Liberties Union v. O'Bannon,* 259 F.3d 766 (7th Cir. 2001).

  The Fraternal Order of the Eagles donated Ten Commandments plaques to communities across the U.S. in the 1950s, including one to the Indiana Statehouse in Indianapolis, which was destroyed in 1991 by a vandal. An Indiana State Representative planned a replacement monument consisting of the Ten Commandments, the Bill of Rights, and the Preamble to the Indiana Constitution, but a lawsuit was filed challenging the proposed monument on the grounds that it would establish religion. The court did indeed find that such a monument would violate the Establishment Clause as citizens may not understand the connection between the display and our nation's legal history and think the monument was erected for religious purposes.

- *Kimbley v. Lawrence County, Ind.,* 119 F. Supp. 2d 856 (S.D. Ind. 2000).

  Civil liberties groups filed suit in response to a proposed Ten Commandments display, which had been authorized by state law, seeking to prevent the display.

- *Mercier v. City of La Crosse,* 276 F. Supp. 2d 961 (W.D. Wis. 2003).

  In the 1960s, the Fraternal Order of the Eagles (FOE) donated a Ten Commandments display to the city, and in the 1980s, citizens complained about the display. The city sold the portion of land on which the monument was located to FOE and placed signs stating that FOE owned the property and that the city did not endorse religion. This did not satisfy the Freedom from Religion Foundation and some citizens, and the organization filed a lawsuit still seeking to strike down the display. The court held that despite the fact that the city had sold the land to a private organization, the Ten Commandments monument still implied that the city was endorsing religion and ordered FOE's land be returned to the city and the monument removed.

- *ACLU of Kentucky v. Grayson County,* 2002 WL 1558688 (W.D. Ky. 2002).

  A Grayson County courthouse display called "Foundations of American Law and Government Display" is composed of a variety of documents including the Ten Commandments, the Magna Carta, the Mayflower Compact, The Star Spangled Banner, among others. But the ACLU filed a lawsuit to challenge the display because the Ten Commandments were included. The court censored the use of the Ten Commandments in the display.

- *ACLU Neb. Found v. City of Plattsmouth*, 358 F.3d 1020 (8th Cir. 2004), vacated, reh'g granted 2004 U.S. App. LEXIS 6636.

  The ACLU and a member who resided in Plattsmouth, Nebraska filed suit, complaining that the city's Ten Commandment display violated the Establishment Clause. The display was donated to the city in 1965 by the Fraternal Order of the Eagles, which erected many such displays in the 1950s and 1960s in an effort to combat juvenile delinquency. The court struck the display down, determining that it promoted religion.

- *Adland v. Russ,* 307 F.3d 471 (6th Cir. 2002).

  In 2000, Kentucky Governor Paul E. Patton signed a resolution that permitted public school teachers to display the Ten Commandments in their classroom also authorized the relocation of the Ten Commandments monument from the Fraternal Order of the Eagles on Capitol grounds as part of a display that would showcase Kentucky's Biblical historical heritage. Citizens protested the proposed display and filed a lawsuit to challenge the resolution, and the court determined that the proposal was unconstitutional.

- *Baker v. Adam County/Ohio Valley Sch. Bd.,* 2004 U.S. App. LEXIS 481 (6th Cir. 2004) (not recommended for full-text publication).

  A school board erected Ten Commandment monuments that a county ministerial association paid for, and a suit was filed, challenging the constitutionality of the monuments. The school board added other historical documents relating to the development of American law and government to the displays, but the lawsuit continued anyway. The court ordered that the monuments be removed.

- *Books v. City of Elkhart*, 235 F.3d 292 (7th Cir. 2001).

  Elkhart's Municipal Building had a monument of the Ten Commandments, and residents filed suit in objection to the display, claiming it violated the Establishment Clause. The Seventh Circuit struck down the display.

- *ACLU v. McCreary County,* 354 F.3d 438 (6th Cir. 2003).

  The ACLU filed suit to challenge Ten Commandments displays from three Kentucky county courthouses, seeking to have the displays removed, and the Sixth Circuit ordered the displays be eradicated from the courthouse.

- *ACLU of Ohio v. Ashbrook,* 211 F. Supp. 2d 873 (N.D. Ohio 2002).

  The ACLU brought a lawsuit seeking the removal of the Ten Commandments from a state courtroom display, which features the Ten Commandments along with the Bill of Rights, and the court struck down the display.

- *ACLU of Tenn. v. Hamilton County,* 202 F. Supp. 2d 757 (E.D. Tenn. 2002).

  The ACLU filed suit challenging the Ten Commandments displays in county courthouses.

- *ACLU of Tenn. v. Rutherford County,* 209 F. Supp. 2d 799 (M.D. Tenn. 2002).

  The ACLU sued Rutherford County to challenge the Ten Commandments display in the county courthouse lobby.

- *Chambers v. City of Frederick,* 292 F. Supp. 2d 766 (N.D. Md. 2003) (mem.).

Chambers, a Frederick resident, objected to the Ten Commandment display in the city park that the Fraternal Order of the Eagles (FOE) had donated in 1958. In response, the city sold that portion of the park to the FOE, and the FOE covenanted to care for the area. Chambers still not satisfied, filed a lawsuit.

- *DiLoreto v. Downey Unified Sch. Dist. Bd. of Educ.*, 196 F.3d 958 (9th Cir. 1999).

  A school's baseball booster club raised funds by selling ads on the baseball field fence for $400. Mr. DiLoreto, CEO of Yale Engineering, bought an ad, which he sought to use to display the Ten Commandments. But the sign was rejected and Mr. DiLoreto's money was returned. A lawsuit was filed to protect Mr. DiLoreto from viewpoint discrimination.

- *Doe v. Harlan County Sch. Dist.*, 96 F. Supp. 2d 667 (E.D. Ky. 2000).

  A Harlan student's parents filed suit to challenge the public schools' practice posting the Ten Commandments in classrooms. In response to the lawsuit, the school district added other historical documents to the displays, but the lawsuit continued.

- *Freethought Soc'y v. Chester County,* 334 F.3d 247 (3rd Cir. 2003).

  A lawsuit was filed to challenge the Ten Commandments display on the county courthouse facade, but the court allowed the display to remain.

- *Grassroth v. Moore,* 335 F.3d 1282 (11th Cir. 2004).

  Alabama Supreme Court Chief Justice Roy S. Moore installed a Ten Commandments monument in the state's judicial building, and a lawsuit was filed to challenge the display and the monument was forcibly removed.

- *Stone v. Graham*, 449 U.S. 39 (1980) (per curiam).

  A lawsuit challenged a statute that required the posting of the Ten Commandment in classrooms, with a disclaimer relating to the secular use of the Ten Commandments in Western Civilization.

- *Summum v. City of Ogden,* 297 F.3d 995 (10th Cir. 2002).

  The Summum Church asked the city of Ogden to replace a Ten Commandments display that the Fratemal Order of the Eagles had donated to the city with a monument to the Summum religion. The church filed a lawsuit.

- *Turner v. Habersham County,* 290 F. Supp. 2d 1362 (2003).

  Citizens challenged the display of the Ten Commandments at the Habersham County Courthouse.

- *Van Orden v. Perry,* 351 F.3d 173 (5th Cir. 2003).

  A Texan challenged the Ten Commandments display on state capitol grounds in Austin, but the court upheld the display.

- *Young v. County of Charleston,* 1999 WL 33530383 (S.C. Com. Pl. 1999).

  A court struck down a city courthouse Ten Commandment display as a violation of the Establishment Clause.

- Nicole Buzzard, *A Youth with a Mission: A Santiago High School Junior seeks to post the Ten Commandments at Corona-Norco Campuses,* The Press Enterprise Co. (Riverside, CA), June 30, 2004, B01.

  High school junior Jason Farr wanted to post Ten Commandments fliers in his high school, Santiago High School, and other schools in his district. After

posting the Ten Commandments fliers, he was threatened with a five-day suspension. Additionally, Farr has been informed that the Bible is not suitable material for the silent reading period, despite the fact that it fulfills page and genre requirements.

- Brad Hern, *Coalition Wants to put Monument on Ballot; Boise City Attorneys will Determine whether Voter Initiative is Valid,* The Idaho Statesman, June 14, 2004, at Local, p. 1.

  Supporters of Ten Commandments displays in Treasure Valley are working to overturn the removal of the Ten Commandments display by the city council.

- Kristen Wyatt, *Counties Continue Religious Postings,* The Associated Press, July 8, 2004, North Georgia, B1.

  Two Georgia counties have added Ten Commandment displays to their courthouses, and legal challenges may likely follow.

- *From Manhattan, Kansas:*

  The ACLU and the Americans United for Separation of Church and State challenged a Ten Commandments monument at the city hall in Manhattan. After the lawsuit was filed, the City Commission decided to settle and remove the display.

- *From Everett, Washington:*

  The Americans United for Separation of Church and State filed suit challenging a Ten Commandments Display donated by the Fraternal Order of Eagles.

- Brian T. Coolidge, *From Mount Sinai to the Courtroom: Why Courtroom Displays of the Ten Commandments and Other Religious Text Violate the Establishment Clause,* 39 S. Tex. L. Rev. 101 (1997).

OTHER

- *Marsh v. Chambers,* 463 U.S. 783 (1983).

  A member of the Nebraska legislature brought suit challenging the longstanding practice of employing a chaplain to pray before the opening of each legislative session, claiming the practice was unconstitutional.

- *Barnes-Wallace v. Boy Scouts of America,* 275 F. Supp. 2d 1259 (S.C. Cal. 2003).

  An agnostic family sued San Diego and the Boy Scouts because the city had leased some public parkland to the Boy Scouts. They claimed the lease violated the Establishment Clause.

- *HEB Ministries v. Texas Higher Educ. Coordinating Bd.,* 114 S.W.3d 617 (Ct. App., Austin 2003).

  Texas passed a law forcing all private postsecondary educational institutions in the state to get accreditation from a state agency. Tyndale Seminary was fined $173,000 by the state for using the word "seminary" and issuing theological degrees without government approval. A suit was filed to prohibit the government attempts to control religious training, but the Texas Court of Appeals in Austin upheld the law.

- *Doe v. Vill. of Crestwood,* 917 F.2d 1476 (7th Cir. 1990).

  A long-standing tradition of the Village of Crestwood's "A Touch of Italy" festival was to include an Italian Mass, but a citizen filed suit challenging the mass tradition.

- *Freedom From Religion Found. v. McCallum,* 324 F.3d 880 (7th Cir. 2003).

  The Freedom from Religion Foundation filed a lawsuit to prevent correctional authorities from funding

Faith Works because the halfway house incorporates Christianity into its program.

- *Freedom From Religion Found. v. Romer,* 921 P.2d 84 (Colo. Ct App. 1996).

  The Freedom from Religion Foundation sued Denver City Council members and Arapaho County officials after the Pope visited Denver for World Youth Day in 1993. The lawsuit asserted that using a state park for religious services, temporarily closing the park to the public and use of state funds to facilitate the visit violated the First and Fourteenth Amendments.

- *North Carolina Civil Liberties Union Legal Foundation v. Constangy,* 947 F.2d 1145 (4th Cir. 1991).

  A legal organization and some citizens challenged a judge's practice of opening his session with a prayer, seeking to forbid the judge from continuing the practice.

- Bill McAllister, *Postal Service Ends Christ Camp Stamp Series,* Washington Post, Nov. 19, 1994, at F1.

  The Post Office replaced its Madonna and Child stamp in the holiday stamp collection with an angel stamp after using the Madonna and Child for 28 years. The Post Office resumed the stamp after there was a public outcry.

- *From Madison, Wisconsin:*

  The Freedom from Religion Foundation challenged the constitutionality of a faith-based program working to rehabilitate and treat prisoners who have drug and alcohol addictions. The program was highly successful and President Bush even visited it to stress excellence and success of the program. Although the faith-based program was merely an option, and no prisoner had to choose to attend the program, the

Freedom from Religion Foundation challenged the program because of its disdain that the program was an option for prisoners and that state funding was used by the program, claiming a "separation of church and state" violation.

- *Grace Community Church, et al. v. City of McKinney, et al.,*

  Civil Action No. 4:04CV251

A new church starting in McKinney, Texas began meeting on Sundays in the pastor's home with a few couples. The City took drastic action to shut down a church meeting in the home. The City has no problem with people meeting in their homes for football watch parties, birthday parties or even commercial gatherings to sell Tupperware. However, the City prohibits a church meeting in a home unless the home sits on at least two acres.

SUMMARY OF STATE CONSTITUTIONS
RE: *RELIGION* CLAUSES

State (*Citation*)	No Establishment	No Preference	No Expenditure Of Public Funds	No Compulsion	No Religious Instruction In Public Education
Alabama (*Ala. Const.*)	Art. I, sec. 3	Art. I, sec. 3	Art. I, sec. 3	Art. I, sec. 3	Art. XIV, sec. 263
Alaska (*AK Const.*)	Art. 1, sec 4	–	–	–	–
Arizona (*A.R.S. Const.*)	–	–	Art. 2, sec. 12 Art. 9, sec. 10	–	Art. 11, sec. 7
Arkansas (*AK Const.*)	–	Art. II, sec. 24	–	Art. II, sec. 24	–
California (*Ann. Cal. Const.*)	Art. I, sec. 4	Art. I, sec. 4	Art. IX, sec. 8 Art. XVI, sec. 5	–	Art. IX, sec. 8
Colorado (*C.R.S.A. Const.*)	–	Art. II, sec. 4	Art. IX, sec. 7 Art. V, sec. 34	Art. II, sec. 4	Art. IX, sec. 8

State (*Citation*)	No Establishment	No Preference	No Expenditure Of Public Funds	No Compulsion	No Religious Instruction In Public Education
Connecticut (*C.G.S.A. Const.*)	–	Art. VII	–	Art. VII	–
Delaware (*Del.C.Ann. Const.*)	–	Art. I, sec. 1	Art. X, sec. 3	Art. I, sec. 1	–
Florida (*F.S.A. Const.*)	Art. I, sec. 3	–	Art. I, sec. 3	–	–
Georgia (*Ga Const*)	–	–	Art. I, sec. 2	–	–
Hawaii (*HI Const.*)	Art. I, sec. 4	–	Art. X, sec. 1 Art. VII, sec. 4	–	Art. X, sec. 1
Idaho (*ID Const.*)	–	Art. I, sec. 4	Art. IX, sec. 5	Art. I, sec. 4 Art. IX, sec. 6	Art. IX, sec. 6
Illinois (*ILCS Const.*)	–	Art. I, sec. 3	Art. X, sec. 3	Art. I, sec. 3	–

State (*Citation*)	No Establishment	No Preference	No Expenditure Of Public Funds	No Compulsion	No Religious Instruction In Public Education
Indiana (*IN Const.*)	–	Art. I, sec. 4	Art. I, sec. 4	Art. I, sec. 4	–
Iowa (*I.C.A. Const.*)	Art. I, sec. 3	–	–	Art. I, sec. 3	–
Kansas (*K.S.A. Const. Bill of Rights*)	–	Sec. 7	Sec. 7	Sec. 7	–
Kentucky (*KY Const.*)	–	Bill of Rights, sec. 5	Education, sec. 189	Bill of Right, sec. 5	–
Louisiana (*LSA-Const.*)	Art. I, sec. 8	–	–	–	–
Maine (*M.R.S.A. Const.*)	–	Art. I, sec. 3	–	–	–

State (*Citation*)	No Establishment	No Preference	No Expenditure Of Public Funds	No Compulsion	No Religious Instruction In Public Education
Maryland (*MD Constitution, Declaration of Rights*)	–	–	–	Art. 36	–
Massachusetts (*M.G.L.A. Const.*)	–	Art. XI	–	–	–
Michigan (*M.C.L.A. Const.*)	–	–	Art. I, sec. 4 Art. VII, sec. 2	Art. I, sec. 4	–
Minnesota (*M.S.A. Const.*)	–	Art. I, sec. 16	Art. I, sect. 16 Art. XIII, sec. 2	Art. I, sec. 16	–
Mississippi (*MS Const.*)	–	Art. III, sec. 18	Art. VIII, sec. 208	–	–
Missouri (*V.A.M.S. Const.*)	–	Art. I, sec. 7	Art. I, sec. 7 Art. IX, sec. 8	Art. I, sec. 6	–

State (*Citation*)	No Establishment	No Preference	No Expenditure Of Public Funds	No Compulsion	No Religious Instruction In Public Education
Montana (*MT Const.*)	Art. II, sec. 5	–	Art. X, sec. 6	Art. X, sec. 7	Art. X, sec. 7
Nebraska (*NE Const.*)	–	Art. I, sec. 4	–	Art. I, sec. 4	–
Nevada (*N.R.S. Const.*)	–	Art. I, sec. 4	Art. XI, sec. 10	–	Art. XI, 9
New Hampshire (*N.H. Const.*)	–	Part I, Art. 6	Part I, Art. 6	Part I, Art. 6	–
New Jersey (*N.J.S.A. Const.*)	Art. I, sec. 4	Art. I, sec. 4	Art. I, sec. 3	Art. I, sec. 3	–
New Mexico (*NM Const.*)	–	Art. II, sec. 11	Art. XII, sec. 3	Art. II, sec. 11 Art. XII, sec. 9	–
New York (*McKinney's Const.*)	–	Art. I, sec. 3	Art. XI, sec. 3	–	–

State (*Citation*)	No Establishment	No Preference	No Expenditure Of Public Funds	No Compulsion	No Religious Instruction In Public Education
North Carolina (*N.C.G.S.A.*)	–	Art. I, sec. 13	–	Art. I, sec. 13	–
North Dakota (*NDCC Const.*)		Art. I, sec. 3	Art. VIII, sec. 5		Art. VIII, sec. 1
Ohio (*OH Const.*)	–	Art. I, sec. 7	–	Art. I, sec. 7	–
Oklahoma (*OK Const.*)	–	–	Art. II, sec. 5	–	Art. I, sec. 5
Oregon (*OR Const.*)	–	–	Art. I, sec. 5	–	–
Pennsylvania (*PA Const.*)	–	Art. I, sec. 3	Art. III, sec. 15	Art. I, sec. 3	–
Rhode Island (*RI Const.*)	–	–	–	Art. I, sec. 3	–

State (*Citation*)	No Establishment	No Preference	No Expenditure Of Public Funds	No Compulsion	No Religious Instruction In Public Education
South Carolina (*S.C. Const.*)	Art. I, sec. 2	–	Art. XI, sec. 4	–	–
South Dakota (*SD Const.*)	–	Art. VI, sec. 3	Art. VI, sec. 3	Art. VI, sec. 3	Art. VIII, sec. 16
Tennessee (*TN Const.*)	–	At. I, sec. 3	–	Art. I, sec. 3	–
Texas (*Vernon's Ann. Texas Const.*)	–	Art. I, sec. 6	–	Art. I, sec. 6	–
Utah (*U.C.A. 1953, Const.*)	Art. I, sec. 4	Art. I, sec. 4	Art. I, sec. 4 Art. X, sec. 9	–	–
Vermont (*VT Const.*)	–	–	–	Chap. I, art. 3	–

State (*Citation*)	No Establishment	No Preference	No Expenditure Of Public Funds	No Compulsion	No Religious Instruction In Public Education
Virginia (*VA Const.*)	Art. I, sec. 16	Art. I, sec. 16	Art. I, sec. 16; Art. IV, sec. 16	Art. I, sec. 16	Art. VIII, sec. 10
Washington (*RWCA Const.*)	–	–	Art. I, sec. 11; Art. IX, sec. 4	–	Art. IX, sec. 4
West Virginia (*WV Const.*)	–	Art. III, sec. 15	Art. III, sec. 15	Art. III, sec. 15; Art. III, sec. 15(a)	–
Wisconsin (*W.S.A. Const.*)	–	Art. I, sec. 18	Art. I, sec. 18	Art. I, sec. 18	Art. X, sec. 3
Wyoming (*WY Const*)	–	–	Art. I, sec. 19 Art. VII, sec. 8	–	Art. VII, sec. 12

Jefferson's Letter to the Danbury Baptists

The Draft and Recently Discovered Text

To messers Nehemiah Dodge, Ephraim Robbins, & Stephen S. Nelson, a committee of the Danbury Baptist association in the state of Connecticut.

Gentlemen

The affectionate sentiments of esteem & approbation which you are so good as to express towards me, on behalf of the Danbury Baptist association, give me the highest satisfaction. my duties dictate a faithful & zealous pursuit of the interests of my constituents, and, in proportion as they are persuaded of my fidelity to those duties, the discharge of them becomes more & more pleasing.

Believing with you that religion is a matter which lies solely between man & his god, that he owes account to none other for his faith or his worship, that the legitimate powers of government reach actions only and not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that their legislature should "make no law respecting an establishment of religion, or prohibiting the free exercise thereof;" thus building a wall of eternal separation between Church & State. ***Congress thus inhibited from acts respecting religion, and the Executive authorised only to execute their acts, I have refrained from prescribing even those occasional performances of devotion, practiced indeed by the Executive of another nation as the legal head of its church, but subject here, as religious exercises only to the voluntary regulations and discipline of each respective sect,***

[Jefferson first wrote: "confining myself therefore to the duties of my station, which are merely temporal, be assured that your religious rights shall never be infringed by any act of mine and that." These lines he crossed out and then wrote: "concurring with"; having crossed out these two words, he wrote: "Adhering to this great act of national legislation in behalf of the rights of conscience"; next he crossed out these words and wrote: "Adhering to this expression of the supreme will of the nation in behalf of the rights of conscience I shall see with friendly dispositions the progress of those sentiments which tend to restore to man all his natural rights, convinced that he has no natural rights in opposition to his social duties."]

I reciprocate your kind prayers for the protection & blessing of the common father and creator of man, and tender you for yourselves & the Danbury Baptist [your religious] association assurances of my high respect & esteem.

Th Jefferson
Jan. 1. 1802.